

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

August 4, 2009

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Peggy Brown
Mary Lou McDowell
Rob Osborne
Kass Sheedy

Commissioners Absent: Angela Dressel

Staff Present: Roy H. Lopata, Planning and Development Director
David Athey, Councilman, District 4

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

1. THE MINUTES OF THE JULY 7, 2009 PLANNING COMMISSION MEETING.

Mr. Jim Bowman: Are there any additions or corrections to the minutes?

Mr. Rob Osborne: Yes, Mr. Chairman, the first one is on page #39. It is the Mr. Locke statement. There was, I guess, some inaudible language. I don't know if it is appropriate to amend it without being sure, but I believe it would suffice to say, "It will be narrower and will be limited to pedestrian traffic;" is what I believe he was trying to convey about the alley way that I had asked about.

On page #40 second to last paragraph at the bottom of the page, first line, the sentence that begins with "I think," the "you" should probably be "your."

Also, on page #41, the fourth paragraph from the bottom, it says, "Mr. Brown," Commissioner Brown would probably like that to be noted as "Ms. Brown."

Mr. Ralph Begleiter: On page #40 in the third paragraph, photoshopping is a brand name. It should be capital P for photo and capital S for shopping and the p should be pp.

Mr. Osborne: On page #46, first paragraph, was your statement. It says, "Well, that is none." I think the word none should be one." And, also, in the fifth paragraph, Mr. Begleiter starts off with "I would think that deliveries . . ." The second to last line of that paragraph where it says, ". . . isn't illegal;" I think the period should be removed.

MOTION BY OSBORNE, SECONDED BY MR. BEGLEITER THAT THE MINUTES BE APPROVED AS CORRECTED.

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

ABSENT: ANGELA DRESSEL

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF THE MAJOR SUBDIVISION AND SPECIAL USE PERMIT OF THE 6.03 ACRE 1119 S. COLLEGE AVENUE PROPERTY FOR A SIX STORY 101 ROOM CANDLEWOOD SUITES HOTEL.

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“On September 18, 2008, the Planning and Development Department received applications from SSN Hotel Management, LLC, for the major subdivision and special use permit for their 5.02 acre property located at 1119 S. College Avenue. The applicants are requesting major subdivision and special use permit approval in order to construct a six story, 101 room Candlewood Suites Hotel. Because of parking configurations at the site, and accompanying cross easements, this major subdivision slightly impacts the adjoining Friendly’s Restaurant 1.01 acre parcel. Please note that the applicants, under another corporate name, own and operate the Howard Johnson’s motel on the southern portion of the property under review here.

Please see the attached Landmark Engineering Candlewood Hotel major subdivision and special use permit plan, artist’s building rendition, and supporting letter.

The Planning and Development Department’s report on the Candlewood Suites Hotel project follows:

Property Description and Related Data

1. Location:

1119 S. College Avenue (State Route 896); hotel shown at southeast corner of S. College Avenue and Welsh Tract Road intersection, on the Welsh Tract Road frontage.

2. Size:

Hotel property (including Howard Johnson’s):	5.02 acres
Friendly’s Restaurant:	<u>1.01 acres</u>
Total Site:	6.03 acres

3. Existing Land Use:

The 1119 S. College Avenue property contains the three-story Howard Johnson’s motel, and associated parking area and accessory uses, including a swimming pool. The proposed new hotel building is shown at the portion of the site that consists of mowed lawn and some paved parking.

4. Physical Condition of the Site:

The 1119 S. College Avenue property is a developed site containing commercial facilities, a parking area, and some landscaping.

In terms of topography, the site slopes primarily from its highest points at the eastern boundary of the property toward the south and southwest, with the lowest point at the southwest corner of the parcel.

Regarding soils, according to the United States Department of Agriculture’s Natural Resources Conservation Service, the 1119 S. College Avenue property site consists primarily of Keyport Silt Loam soil. According to the Natural Resources Conservation Service, such soils have “moderate” development limitations for the use proposed.

Please note that very small portions of the southwest corner of the Howard Johnson's Motel site and small adjoining segments of the Friendly's Restaurant parcel are located within the confines of the 500 year and 100 year floodplains of the Christina Creek. No new construction is proposed at these locations.

Planning and Zoning

The BC (general commercial) zoning at the site permits the following:

- A. Auction
- B. Automobile, truck, rentals, retail, and wholesale sales with special requirements
- C. Crating service
- D. Frozen food locker
- E. Ice Manufacture
- F. Sign painting and manufacture
- G. Warehousing with special requirements
- H. Wholesale sales with special requirements
- I. Photo developing and finishing
- J. Veterinary hospital
- K. Cleaning and dyeing plants
- L. Commercial laundries/dry cleaners
- M. Laundromats
- N. Outdoor commercial recreational facilities with special requirements
- O. Swimming club, private or commercial
- P. Social club, fraternal, social service, union and civic organizations, except on ground floor locations
- Q. Studio for artists, designers, photographers, musicians, and sculptors
- R. Offices for professional services and administrative activities
- S. Personal service establishments
- T. Finance institutions, banks, loan companies
- U. Retail and specialty stores
- V. Repair and servicing, indoor and off-site, of any article for sale, which is permitted in this district
- W. Related indoor storage facilities are permitted as an accessory use to any of the permitted uses in this district
- X. Accessory uses and accessory buildings
- Y. Restaurants, taverns, bakery-restaurants, and delicatessens
- Z. Public parking garage and parking lot
 - a. Parking off-street
 - b. Public transportation facilities, including bus or transit stops for the loading and unloading of passengers; station and depots
 - c. Street, right-of-way
 - d. Utility transmission and distribution lines
 - e. Water tower, water reservoir, water storage tank, pumping station, and sewer
 - f. Retail food stores up to 5,000 square feet in maximum floor area, limited to bakeries confectionery, candy, gourmet shops, small convenience grocery, and meat sales facilities. Goods produced on the premises shall be sold only on the premises

BC zoning also permits, with a Council granted Special Use Permit, the following:

- A. Automobile repair and/or service station, paint and/or body shop with special requirements
- B. Self-service car wash establishment with special requirements
- C. Automobile/motor vehicle repair with special requirements
- D. Automatic car wash establishment with special requirements
- E. Used car lots
- F. Retail food stores
- G. Fast-food and cafeteria style restaurants with special requirements
- H. Drive-in restaurants, with special requirements
- I. Drive-in and curb service for other than eating establishments.

- J. Substation, electric, gas, and telephone central office with special requirements
- K. Tower, broadcasting and telecommunications with special requirements
- L. Police and fire stations
- M. Library, museum and art gallery
- N. Church, or other place of worship, seminary or convent, parish house, or Sunday school building
- O. Instructional, business or trade schools
- P. Motels and hotels
- Q. Commercial indoor recreation and indoor theaters
- R. Adult bookstore/adult entertainment center with special requirements
- S. Restaurants with alcoholic beverages

Please note that the Candlewood Hotel subdivision and special use permit plan meets or can meet all the applicable BC zoning requirements. In this regard, please also note that a subdivision reference at the northeast corner of the site plan concerning, “paving setback nonconformity,” should be deleted; this reflects a misunderstanding regarding our BC zoning setback requirements that do not apply to parking areas.

In terms of adjoining properties, the lands immediately south of the 1119 S. College Avenue site are zoned RS (single family, detached) and contain single family detached dwellings. RD (single family, semi-detached) zoned single family homes are located east of the site on Old Cooches Bridge Road. A small BC zoned shopping area is located north of the site across Welsh Tract Road. BC and OFD (Open Floodway District) zoned commercial properties, including a motel, are located west of the site across S. College Avenue. I-95 (the John F. Kennedy Memorial Highway) is located approximately 500 feet south of the hotel site with this Interstate Highway’s entrances and exits at S. College Avenue.

Regarding comprehensive planning, Newark Comprehensive Development Plan IV calls for, “commercial (auto oriented)” land uses at the Candlewood Suites site’s location. The Plan defines, “commercial (auto oriented),” as, “shopping and commercial uses of all types, including retail facilities for buying and selling of goods, administrative offices, personal services establishments, eating establishments, and shopping centers ordinarily included in general business districts with customers, to a large extent, relying on the automobile to patronize these businesses.”

Status of the Site Design

Please note that at this stage in the Newark subdivision review process, applicants need only show the general site design and the architectural character of the project. For the site design, specific details taking into account topographic and other natural features must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting and related exterior features. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan is referred back to City Council for its further review and reapproval. That is, initial Council subdivision plan approval means that the general site concept and more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision set parameters -- to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision agreement for the project.

Be that as it may, the Candlewood Hotel subdivision and special use permit plan calls for the construction of a six-story 101 room all suites hotel within an approximately 10,400 sq. ft. footprint building [the coversheet of the subdivision plan shows a footprint of “10,430 sq. ft.,” and the landscape plan shows a “10,380 sq. ft.” footprint]. A redesigned access way from Welsh Tract Road and a revised portion of the parking area with curbed

traffic isles are shown on the plan. Parking will continue to be shared on the site with Friendly’s Restaurant patrons. The Howard Johnson’s motel swimming pool will be replaced with additional site parking.

Please consult the applicant’s landscape plan for landscape details, including additions to the evergreen screen at the site’s eastern boundary along Old Cooches Bridge Road.

Please consult the applicant’s submitted building elevation drawings for additional information concerning the proposed building design. To evaluate the proposed architectural design, the Planning Commission should consult the design criteria in the Municipal Code Chapter 27, Subdivision and Development Regulations Appendix XIV(d).

Fiscal Impact

The Planning and Development Department has evaluated the impact of the proposed Candlewood Suites Hotel on Newark’s municipal finances. The estimates are based on the Department’s Fiscal Impact Model. The Model projects the Candlewood Suites fiscal impact; that is, total annual municipal revenues less the cost of municipal services provided. The Planning and Development Department’s estimate of net revenues follow:

	<u>Net Revenue</u>
First Year & Thereafter	\$36,780.00

Please note that because the property is currently owned by the hotel developers and operators no transfer tax will be assessed.

Traffic and Transportation

Because of the size and location of the proposed Candlewood Suites Hotel, the Planning and Development Department requested that DelDOT review the project, based on the Department’s traffic impact requirements and the City’s Subdivision and Development Regulations Appendix XV, Traffic and Transportation Analysis.

While DelDOT indicates that some of the warrants for a traffic impact study are met by the project – the average number of vehicles per day and peak hour vehicles expected to be generated from the site and the “possibility” that S. College Avenue and Welsh Tract Road are operating during peak hours at levels of service E or F – the Department has determined that because the developer cannot improve the intersection, a traffic impact study will not be required. As a result, based on Departmental regulations, a payment of an “impact fee,” of \$3,150 will be assessed for the project. Please note in this regard that DelDOT has also indicated that they have not, “verified the level of service at this location.” Moreover, the City’s Subdivision and Development Regulations Appendix XV specifies that DelDOT recommended mitigation measures should be required for projects with a rating of levels of service of E or F. In this case, therefore, because DelDOT notes that, “. . . seeing no means by which the developer could improve this intersection, we have determined that we will accept the developer’s payment of the fee and will not require a traffic impact study,” the required impact fee will be the suggested mitigation measure for this project.

DelDOT also indicates that prior to the issuance of building permits for this site, DelDOT/Developer signal agreements would be required for the impacted intersections and a “Letter of No Objection,” will be necessary for approval for access to the adjacent State roadways.

Subdivision Advisory Committee

The City’s Subdivision Advisory Committee – consisting of the Management, Planning and Operating Departments – has reviewed the Candlewood Suites major subdivision and special use permit plan and has provided the comments below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

1. The Planning and Development Department notes, regarding comprehensive planning, that the proposed Candlewood Suites Hotel corresponds to Comprehensive Development Plan IV's land use recommendations for the S. College Avenue location.
2. The Planning and Development Department adds that because of the site's close proximity to I-95 and other local motels, the proposed Candlewood Suites is an appropriate land use that corresponds to the development and roadway access pattern in the immediate area.
3. The Planning and Development Department also notes, based on our review with the Police Department, that the owners of the property have been working satisfactorily with that Department in response to law enforcement problems that have occurred at the Howard Johnson's location in the past.
4. The Planning and Development Department also suggests that the Planning Commission recommend as subdivision site design conditions the following:
 - The architectural design for the facades of the building should be carried out on all building elevations visible from public ways.
 - Storage areas, mechanical and all utility hardware shall be screened from view from public ways and adjacent properties in a manner consistent with the proposed architectural design.
 - A six foot high solid fence should be reinstalled separating the south side of the property (adjacent to the Howard Johnson's) from the existing homes and rear yards on Old Cooches Bridge Road.
5. In order to limit future intense commercial development at this location, including the potential impact on traffic flow, the Planning and Development Department suggests that the Planning Commission recommend that the applicant voluntarily agree to deed restrict the 1119 S. College parcel so as not to permit the following uses:
 - A. Commercial laundries/dry cleaners
 - B. Laundromats
 - C. Restaurants with or without alcoholic beverages; cafeteria, drive-in and fast food restaurants and delicatessens; except that restaurants, accessory to and constructed within a hotel or motel shall be permitted
 - D. Retail food stores of all sizes
 - E. Automobile repair and/or service station, paint and/or body shop with special requirements
 - F. Self-service car wash establishment with special requirements
 - G. Automobile/motor vehicle repair with special requirements
 - H. Automatic car wash establishment with special requirements
 - I. Used car lots
 - J. Adult bookstore/adult entertainment center with special requirements
6. The Public Works Department has reviewed the stormwater management report submitted by the applicants and indicates that because of the site's poor infiltration rates additional "green technology," should be shown on the plan. This may entail a reduction in the proposed building footprint to allow for the installation of a "bio-filtration" facility.
7. The Public Works Department also indicates that, through the construction improvement plan process, the applicant should review with the Department stormwater management issues, handicapped accessibility, and cross access easements for the site.
8. The Electric Department indicates the following:
 - The applicant will be required to pay all costs for any required pole relocations.

- The applicant will be required to sign a purchase power agreement as part of the subdivision agreement.
 - The applicant will be required to pay \$3,000 toward the cost of the transformer and meter at the site. The applicant, in addition, is required to install underground low and high voltage cables.
9. The Parks Department has reviewed and approved the proposed landscape plan.
10. The Building Department notes that the plan will be required to meet all applicable International Building Code requirements. Depending upon the ultimate design height of the building, the facility may also be required to meet “high-rise” Code requirements.
11. The City Building Department Fire Marshal and the Aetna Hose, Hook and Ladder Fire Company have indicated the following:
- Any parking between the proposed building and the primary fire lane should be eliminated.
 - All fire lanes and the portion of the building fronting on Welsh Tract Road must be within 30 feet of the closest edge of the fire lane or that roadway. The primary fire lane should run along the entire front of the building.
 - Note 3 on the plan should be revised to refer to the 2006 version of the State Fire Prevention Regulations.
 - The fire lane at the front of the building within the parking area must be a minimum of 24 feet wide at all points.
 - Regarding water lines, the connection between the proposed 8” water line on the site to the existing waterline at Old Cooches Bridge Road should be shown and the size of the Old Cooches Bridge Road water line should be identified.
 - The size of the underground fire line serving the sprinkler system needs to be indicated along with the location of the Fire Department connections.
12. The Water and Wastewater Department indicates the following:
- The plan needs to be revised to show a water line tie-in on Old Cooches Bridge Road.
 - The Department recommends that the 8” water line paralleling Welsh Tract Road should be shown in the right-of-way along with the proposed fire hydrant. The second site fire hydrant will need a utility easement.
 - Valves on the domestic water and fire service from the proposed building should be shown.
 - Regarding sanitary sewer service the applicant should review with the Department the following: tie-in manhole requirements on S. College Avenue; the need for an easement on the site between the applicant’s property and the Friendly’s Restaurant; and the restoration of the cleanout on the sewer line connecting to the main in S. College Avenue.
 - An STP fee will be required through the certificate of occupancy process.
13. The Police Department indicates concerns with traffic that can be expected to be generated from the hotel, especially during peak periods, entering and exiting the site at Welsh Tract Road. In addition, the Department believes that prior to issuance of certificates of occupancy, the required DelDOT signal agreement should also included specifications for crosswalk signals and crosswalks at the S. College Avenue/Welsh Tract Road intersection.

Recommendation

Because the proposed Candlewood Suites, with the Subdivision Advisory Committee recommended conditions, will not have a negative impact on nearby and adjacent properties, because the project, with the recommended conditions, conforms to the land use recommendations in Comprehensive Development Plan IV, because the plan meets all applicable Code requirements, and because the proposed use conforms to the

development pattern in the nearby area, the Planning and Development Department suggests that **the Planning Commission take the following actions:**

- A. Recommend that City Council approve the Candlewood Suites major subdivision as shown on the Landmark Engineering, Inc. plan dated April 22, 2009, with the conditions in this report; and,**
- B. Recommend that City Council approve the Candlewood Suites special use permit, as shown on the Landmark Engineering, Inc. plan, dated April 22, 2009, with the conditions in this report.”**

[Secretary’s Note: The members of the Planning Commission and the public referred to visuals brought by the applicants for their presentation to the Planning Commission].

Mr. Bowman: Do the members of the Commission have any questions for the Planning Director before we have the applicants present their case?

Mr. Osborne: I remember reading in the report about the traffic and it looked like the State didn’t see any way to improve the intersection there, but I am speaking not as a Planning Commissioner now but more as a resident and a commuter who travels that area quite a bit, and I know that that light when you are on Welsh Tract Road and you are coming onto 896 as it is now, in my experience, it takes about maybe ten cars until the light actually changes. Without some adjustments to the timing of the light, I would be concerned that the traffic would back up more than what it is today. That is not a very long stretch of road between S. College Avenue and Old Cooches Bridge Road.

Mr. Lopata: I will let the applicant respond to that. I will add that one of the comments that I didn’t mention orally that is in the report is that our Police Department has also raised concerns about pedestrian access. Certainly, there will be some people at the proposed hotel, just as there are now, who will be going back and forth across S. College Avenue to go to the restaurants that are on the west side of that roadway. As a result, the Police Department is suggesting pedestrian signalization and crosswalks be required as part of this project which are obviously things that need to be included.

I will say, since you brought it up, I wrote a letter to DelDOT about the impact fee that they propose. I gave them some local City of Newark of such fees; for example, the parking waiver fee that we charge, which is ten times their fee for various projects. I was just surprised that that number was so miniscule compared to the size of the hotel especially since the State has some financial problems. You would think that they would look at this as an opportunity to help pay for some road improvements that may be needed off-site. In any case, that is neither here nor there, but I think you ought to know that I did do that. I never got a response.

Mr. Begleiter: Roy, you included in the deed restriction you proposed prohibiting restaurants with or without alcoholic beverages except for ones that are inside the hotel, I assume, therefore, that the Friendly’s is grandfathered under some previous decision, right?

Mr. Lopata: It is on a separate parcel. It is not grandfathered. They are not part of this. They are going to move lot lines slightly to accommodate some of the parking but the tax parcel on the Friendly’s site is separate and apart from this project, as well as the gas station. It is not part of this site either.

Mr. Begleiter: These sites are adjacent. They touch.

Mr. Lopata: We can’t deed restrict a property that is not part of this project.

Mr. Begleiter: Right, but can we deed restrict one that is part of this property to prohibit something that is on the very next lot.

Mr. Lopata: If they want a hotel, we can certainly do it. I think the logic of that would be how many restaurants would you like at this location? We did the exact same thing with the Embassy Suites. If you are ever wondering why the Embassy Suites is actually physically

attached to TGI Friday, it is for the same reason. We wanted to be sure when that hotel was approved that we didn't create commercial strip type development north of Route 4 -- in other words, that we didn't encourage the kind of intensive development that I don't think anyone wants in the community. So, we insisted that that restaurant is the hotel's restaurant. The same logic applies here. If I can make the Friendly's go away, in that context, I would do that.

Mr. Begleiter: I wasn't suggesting that you could make Friendly's go away. I was just curious about how we could impose a deed restriction on something where the two lots are adjacent. Your answer is good. It means that if Candlewood Suites wants to put a restaurant on the end of their building, all they have to do is have one 2 X 4 that connects them and it is part of the hotel.

Mr. Lopata: The restaurant must be open to, and it is clearly part of, that hotel operation. We are trying to avoid free standing restaurants. What I am trying to get at here is BC zoning is our most general, most intensive commercial zoning. So, if an applicant comes before us and asks for a six-story large hotel on a site that already has a hotel, it seems to me they ought to be willing to voluntarily agree to deed restrict their property so that that use conforms to the community and that there isn't any additional impacts down the road.

Ms. Lisa Goodman: Good evening, Mr. Chairman, Members of the Commission, Mr. Lopata. I am the attorney representing the project. I am with Young, Conaway, Stargatt and Taylor in Wilmington. With me here this evening is Mr. Bruce Tease with Landmark Engineering. He is the project engineer; Mr. Peter Buy (?) and Mr. Bart Patawala (?) are here on behalf of the applicant.

As Mr. Lopata indicated, we are here to present a subdivision plan and a special use application for this project. As I know you also are all familiar, this project is on the site where the Howard Johnson's is currently located. This is a proposal to place a second hotel on that site. It is a very large site. It is more than adequate in all Code requirements for these two hotels. Again, very similar to the Embassy Suites and the Homewood Hotel right next to it. Very, very, similar idea here.

I have provided you with a small handout. If you take a look behind tabs 1 and 2 of that handout, you will see aerial photos. The one behind tab 1 is a farther range view and at the top you could see the two hotels -- the Embassy Suites and Homewood Suites -- and then you can see that there is a yellow marker where the proposed hotel is; and at the bottom you can see I-95. This is so you can get a good sense of what surrounds this area. Behind tab #2 is a close-up view of mostly just this site with S. College Avenue, Welsh Tract Road and this site, and again, showing approximately where the proposed hotel will be located.

As Mr. Lopata indicated, the site is a little bit more than five acres. If you take into account the Friendly's parcel, it is a little over six acres. The reason that we are showing the Friendly's parcel is because there are some minor adjustments that are being made with the cooperation of the owners of the Friendly's parcel to improve the traffic flow, to repave, to reconfigure so that the whole site because it looks to be one site that it works as one site, that it has safe circulation, adequate parking for everyone who uses it and, frankly, who walks between the uses.

If you take a look behind tab #3 in the handout, you will see a small version of the larger plan to the left here, which is the existing site conditions. I would like to quickly walk you through this. Route 896, S. College Avenue is here. Here is the existing Friendly's. This is the closed gas station that no one here owns and is not for sale. We have tried to purchase it, but it is simply not available. This is the existing Howard Johnson's with the existing parking configuration shown here. So, that gives you a sense of the layout. Here is the entrance on Welsh Tract Road and that will not change. The location of the entrance will stay where it is if this is approved.

As Mr. Lopata also said, this property obviously sits in a busy commercial corridor. It already has one hotel. There is a motel directly across the street. There are two other extended stay hotels right up the street, as you can see behind tab #1. You can see behind tab #4 where we show the proposed site, the changes that are being proposed to this

location. Here is located the new hotel, which, as Mr. Lopata indicates runs along Welsh Tract Road. The entrance is in the same location, some additional parking here, quite a bit of additional landscaping as is required by the Code. The landscaping that is proposed conforms to the requirements of the Code. A reconfiguration is shown here to get better parking to get a green space here in the center and some additional landscaping as well. The pool has been relocated down here, and in general, you can see the changes to the site to accommodate. The site more than accommodates the parking required for both of these uses.

We met with the homeowners in the community in March of this year, with the cooperation and help of Councilman Clifton and Councilman Tuttle. We prepared a flyer for a meeting which was distributed in the neighborhood along Old Cooches Bridge Road and to the rear. Specifically, it was distributed along Old Cooches Bridge Road and homes fronting on both sides of Janice Drive. That was in the area selected by Councilman Clifton whose district it is.

What was discussed at that meeting was really two things. One, we discussed improvements that had been made at the existing Howard Johnson's site; those related to security improvements and putting the installation of security cameras, the installation of signage relating to parking. If you look at the existing site, the Howard Johnson's is a hotel that is used by travelers, by folks that would be traveling through as opposed to an extending stay hotel such as the proposed Candlewood, which is geared much more toward business travelers. I will talk a little bit more about that in a moment.

The site is currently stripped for truck parking here because it is used by folks who are going through carried goods. There had been issues raised in the past with truck parking here in terms of trucks idling and trucks running compressors. Several things were done to address that, which were the topics of the community meeting. One was, this was posted to indicate that it was to be truck parking for hotel guests only. That had been an issue. And second, it was specifically posted to allow no idling and no running of compressors, and security cameras installed so that the folks in the office of the hotel could see if there were trucks there so that they could check. The reports that we have gotten indicate that that has been a large improvement to that issue. There were also discussions with specific neighbors about issues that they had, one in particular which really didn't relate to the proposed new hotel, but a gentleman who was a neighbor on this side (this property here) Mr. Ramsey expressed that he was having some concern – and again, this is existing conditions – with water running through his property. Our engineer went out and met with him on the site of his property, and we have come up with what we think is a design for some drainage improvements on his property that we think will assist him. Again, nothing to do with the proposed hotel because he is having the issues now, but since we are going to be on the site working, it seemed like the right thing to do. If you look behind tab five, you can see a draft drainage exhibit that is the preliminary plan for helping out that issue.

The new hotel is proposed to be 101 rooms, six stories as Mr. Lopata indicated, and all suites, and it will have all the amenities of a business hotel. That is what it is geared for. It is geared for business, and to some smaller extent, leisure travelers. It is designed with the comfort of business travelers in mind. So, it will have things such as a kitchen in each suite, a gym, laundry, high speed internet, work spaces in each suite. It is really geared to the person who comes in to work for a week or who goes home on the weekend because he is on an assignment for a month at UD or any of the companies in this area. The typical stay for a hotel of this type is four to six nights. That is what this is geared to. The minimum room rate – and it is very hard to anticipate this because of the economy and exactly when this is going to be built and what things are looking like now – is anticipated to be \$100 a night. It is obviously not a hotel that is geared toward folks who want to sleep cheap.

Again, as Mr. Lopata indicated, this proposed plan meets all of the requirements of BC zoning, and that is what it is currently zoned. BC zoning permits seven story buildings up to 80 feet tall. This proposed hotel is six stories and the top of the parapet, which is the highest point of the building, is only 63' 8". Actually, most of the building is 57' and about 4". So, the parapet is much higher than the rest of the building.

If you turn behind tab 6, you can see the elevations that we have provided. I apologize, when these were printed out, they apparently have attained somewhat of a pink wash. It is not going to be a pink hotel. It will be more of a stucco colored hotel. But, you can see here the design, and we have provided designs of all sides. You can see, at Mr. Lopata and his department's suggestion, made all of the finished facades. Mr. Lopata is right. You can see this hotel from all sides. We thought that that was an important design feature.

We do not anticipate needing any variances for signage. This hotel should be able to conform to the current Code regarding signage, but I have included one elevation which shows typical wall signage for a Candlewood Suites. This shows two such signs on this building on the center of the elevation behind tab 7 and then to the lefthand side which is a little difficult to see. There will also in all likelihood be one monument sign. That is what we are anticipating at this point, but we will apply for that as one will normally do.

Let me address briefly traffic issues that were the subject of some questions to Mr. Lopata. The warrants for a DelDOT traffic study are 50 peak hour trips in either the a.m. or the p.m. That is typically defined as the hours when the most amount of traffic is on the road. The way you determine that for purposes of whether or not you have to do a traffic study is through the ITE Manual which is the technical manual that sets out anticipated trips for every kind of use you can think of and some that you can't even imagine. The ITE Manual gives a rate of 49 a.m. peak hour trips and 54 p.m. peak hour trips for this hotel. So, it is just on the edge. So, that was the basis on which Mr. Lopata wrote his report and DelDOT made their decision. However, we wanted to have some more realistic better numbers and we didn't know how this was going to turn out. So, if you look behind tab 8, what we did was we sent Bruce Tease himself to an existing Candlewood Suites which was roughly the same size on Route I-95 in Bel Air, Maryland, very, very similar. And, he actually did what they would do if they were doing the traffic study. He sat and counted trips in and trips out at the peak hours. Just to give you some comfort here, what they came up with was a much lower traffic count. They came up with 19 in the a.m. and 24 in the p.m. That is based on an actual count. You can see here the detail that any number of these, of course, were also employees, onsite contractors, the lawn mower showed up that day.

As to the question about the signal timing, that is something that DelDOT will look at. They will look at that when we have to get our entrance permit. I believe that they have already indicated that they will be looking to us in all likelihood to enter into a signal agreement, which means if either a new signal is warranted, which I don't think it would be for our entrance, or if they need to do signal timing adjustments, we are likely to be on the hook potentially in combination with anyone else who might already be on the hook to pay for that. That doesn't come out of DelDOT's budget.

Let me also address briefly the question that got raised about the number regarding to the mitigation fee. I know that Mr. Lopata knows this, but just for the benefit of folks that may not. DelDOT typically calculates that fee as an expression of how much traffic the user is putting through the intersection as a percentage. This is a very busy intersection. It is right off of I-95, with lots of traffic. Remember, they are using the ITE numbers which are twice what we think our actual numbers will be. So, what they are going to say – I am going to get my numbers all wrong because I don't know the actual numbers – well, 100,000 cars go through that intersection a day and your 50 is X percent, and that is how they calculate that number of what each mitigation fee ends up being, just to give you a sense of how that ends up.

We are consistent with the current zoning. We are applying for a special use permit because there are some things within the BC district that require a special use permit. And, they require Council, ultimately, to make a fairly straight forward determination. And, that is, an applicant is entitled to a special use permit if they can show three things. One, that the plan won't have an adverse affect on the health or safety of the area or community; two, that it won't be detrimental to the public welfare or injurious to property; and three, that it is consistent with the Comprehensive Plan. We believe that we more than meet all three of those requirements. As I have gone through our proposal, clearly the Planning and Development Department shares that view in light of their recommendation. And, we are also consistent with everything going on S. College Avenue in terms of their being a

commercial corridor there and hotels and motels there. So, with that, I will be happy to answer any questions.

Mr. Bowman: Are there any questions for the applicants from members of the Commission?

Mr. Begleiter: Lisa, behind tab #7, the photo is missing, that looks like the gazebo that appears on the other photos. So, that picture on tab #7 that shows all that luxurious green open space, almost none of that green open space actually exists. Right? It is mostly gas station and gazebo.

Ms. Goodman: The picture on tab #7, I put in at the last minute because it was a very preliminary one that I had that showed the signage. So, you are correct. The elevations that you should refer to for purposes of seeing what this is going to look like are the ones behind tab #6.

Mr. Begleiter: I have a question about the gas station. You said you tried to buy it. I don't know if it is appropriate for you to reveal very much about those discussions, but in those discussions did your attempt to buy it include the cost of cleaning up? Were you willing to pay for that or were you trying to buy the property and have the owner clean it up before you bought it?

Ms. Goodman: I don't know the answer to that. What I do know is that the response that came back was that it was not for sale. The unfortunate status of that property, as I understand it, is that the owner is still receiving rent even though the business is closed. From a landlord's perspective, I suppose, he has a great gig. Nobody is complaining and he is getting his rent. He sort of has the golden goose there and does not appear to be interested in parting with it.

Mr. Begleiter: For the record, is there any issue that you would have looked into related to the proximity of residential hotel housing within that proximity of the buried gas tanks on that site?

Ms. Goodman: We would have done our due diligence related to any natural contamination on our site; and, if we had found any, that would have been dealt with. So, I think the answer to that is yes, and we are unaware of any issue.

Ms. Sheedy: I see your numbers here, but it seems kind of unrealistic at this level of traffic for a 101 room hotel or a 95 room hotel. It would seem to me that possibly the fairly low level of traffic shown at the Bel Air site may be a reflection of the current economy and an unusually low occupancy rate. What kind of occupancy rate would you anticipate for this hotel? They are business travelers, so they are probably driving. Or, is there some expectation of shuttle buses that may be used to take people around campus? Can you elaborate some more on that issue?

Ms. Goodman: I can't give you an occupancy number because, as you indicated, it is tied to the economy and, frankly, it is tied, as we all know here in Newark, to special events that are going on. On Parents' Weekend you can't get a hotel room. You have to go to Philadelphia. It is certainly possible, I suppose, that the Bel Air numbers are down because of the economy. Although, the good news is that for these types of hotels occupancy has held up quite well. As you indicated, people are driving and you are getting more of that and less of people flying going to further locations, which we all know the airlines are in terrible trouble. All we can do is go and look at a very similar almost identical location. If you are more comfortable looking at it and use the ITE numbers, that is okay with us, too, because that is what everything is based on as far as DelDOT analysis and the City's review of that analysis. But, we are pretty comfortable that the actual numbers are going to be lower than this. I have done this for any number of uses back in the roaring days of this decade, which is look at the ITE numbers and then go and make actual counts. On occasion the counts are higher and they are sometimes lower, too, and sometimes lower by a number that is not inconsistent with this.

Ms. Sheedy: I realize you are not the hotel management so you may not be able to answer this, but you did speak about the amenities and the facilities at the hotel. Some hotels do have the large size vans that are used as local shuttle buses. Do you know if that is anticipated?

Ms. Goodman: I don't know. I don't think that bridge has been crossed here yet. My guess is that if it appears to be an amenity that the guests would like that it might happen in the future, but I can't speak to that.

Ms. Sheedy: Also, at some point could we go into a little bit more detail on the drainage and stormwater control on the site because one of the things that seems to be clear from the before and after diagrams, if you will, is the site is not at present overrun with green space, but certainly the construction of the hotel leaves this with less green space and more impermeable surface. And, there was a statement in the Planning and Development Department's report talking about addressing some more sustainable approaches. Can you speak to where we are on that?

Ms. Goodman: What I am going to do is to ask Mr. Tease, who is the project engineer, to come up and talk generally about the drainage. One of the things that redeveloping all or part of an existing developed site always allows us to do is to improve the drainage. Right now we have an older site that has relatively old drainage, and now we have to conform to the new drainage codes. So, by definition, the drainage is going to be updated and improved and I am going to let Mr. Tease talk about how the drainage currently works and how it will work after this plan is implemented.

Mr. Bruce Tease: I am from Landmark Engineering. As Lisa mentioned, we looked very detailed at the drainage on this site. Basically, today, all the drainage works its way to the south end of the site. There is a ridge line right in here where water goes around this way and balance of it all makes its way towards Rt. 896. There is a storm drainage system that was put in by DelDOT when all the Rt. 896 improvements were done. There was a new storm drain system put in. Our job is to manage the runoff from the site so that it doesn't exceed today's conditions both in quantity and improve the quality of the runoff. So, in terms of quantity we had to look at a two-year, ten-year and a 100-year storm. So, we calculated runoff on the existing site in its current condition and then we came up with a system where we are storing the runoff quantity underground in a pipe system and we are releasing it at a controlled rate. We are using what is called Storm Tech Underground System – some of you may be familiar with it – it is those yellow colored half pipes. That is, basically, buried right here in the middle of the site and it ties into the DelDOT system. Those calculations have to be submitted to DelDOT. They have to be approved by DelDOT. In general, without going into the detailed numbers with you, the amount of water quantity wise that we are releasing about half of what goes there today. So, we should be improving the situation.

Ms. Sheedy: How about retention time? Is the retention time being extended?

Mr. Tease: Yes. Basically, what you do is you store that water in that pipe and then you are releasing it at a controlled rate over a longer period of time. We certainly anticipate that DelDOT is going to approve this approach.

You mentioned the amount of green area. From the existing conditions plan to the proposed conditions plan there is about a quarter acre out of the six acres of additional impervious surface. Of course we want to try to add landscaping and control the traffic. We actually have added some landscape islands that currently aren't there today. We have pretty much spread the green around a little bit more. But we still have to deal with the quantity issue. That Storm Tech System has a stormwater quality component that traps the sediments when they first run off the site. As you mentioned and was noted in the comments from Public Works, they would like to see additional green technology used. Normally on a site like this we would try to recharge the runoff back into the ground, and that would always be our first approach for quantity and quality. We went out and did geo-technical studies. They dug six test pits on this site and found out that we have very poor draining soils and that we have a high ground water to deal with. They have recommended against trying to recharge in this particular situation, and Roy noted that in his report. To try

to provide additional options, we are starting to look into some new technologies that are available. Basically, what we are looking into is a system that is called Grate Inlet Filter Box which is basically baskets that are put in the catch basins that trap the oils and any sediments in the runoff. And, those have to be, of course, maintained.

Another new technology that Joe Charma is really interested in is called Filtara System where you have an existing or proposed catch basin, slightly upstream from that we build another box that to the average person looks like a catch basin. It has a filter medium in it and it has, basically, a tree planted where the box of the basin goes. That works really well when you have a combination of a catch basin near an island. What happens is that the initial wash from the parking lot will go to that first structure with the tree and the filter medium and there will be an overflow component that if you have a really big storm like we had on Sunday, eventually they will go into an overflow situation and go into the normal catch basin. There are some other technologies that we are exploring. So, we feel confident that when we submit the final construction plans to the City, they will be very happy with what we have done.

Ms. Sheedy: How many parking spaces are going to be on this plot excluding the Friendly's, including the Candlewood and the Howard Johnson's?

Mr. Tease: I am going to answer your question in a couple of parts. We are required to have 307 parking spaces for all three uses; the Friendly's, the Candlewood and the Howard Johnson's, and we have that. But, we are required to have 140 spaces for the Howard Johnson's, 101 for the Candlewood, and then we have to have 40 spaces for the restaurant and then we have to have one space for each employee. We end up with $140 + 9$, so 149 for the Howard Johnson's and $101 + 9$ for Candlewood, so 110 for the Candlewood. We also took where the entrances are and the use patterns, and we actually had to submit these plans to the Candlewood franchise for their review before we came here tonight. Of course, they are concerned about parking, too. What we have done is shown them that the parking is immediately available to the Friendly's where people are most likely to park. Right up against the Friendly's or immediately across the isle is more than adequate to handle the Friendly's. It is almost exactly what they need. There will be less of a tendency of the restaurant people to try to go use the other parking. Most of the entrances that are actively used day-to-day for the Howard Johnson's take place here in the front and take place in this back end. That is where the main entrances are. There is an entrance on this end but it is much less frequently used just because of the layout. Of course, the Candlewood is on this end. So, we have actually designated parking spaces that will be signed for Candlewood use only. They will be better access for the Candlewood Suites, and we have gone one step further. Everybody has agreed that we are going to designate in the most remote parking spaces here in the back for employee parking to keep the employees from taking up the most often used parking spaces. Of course, it will be up to management to enforce that.

Ms. Sheedy: You have 259 spaces, so you are saying that the Candlewood Suites is supposed to be used for business people. Normally, business people head out between 7 a.m. or 8 a.m. depending where they are. In Newark, that is basically what you do. You are saying that 101 spaces, so, let's say half of that, 50 cars are going to head out of Candlewood in rush hour traffic. I am a little concerned about the light situation as Rob said. And, I am also a little concerned about the people who live behind, how they are going to get out of their development. I'm a little concerned about the traffic situation. I don't think DelDOT did due diligence, and I would tell them that. I also am concerned about the fact that you are saying you are going to put your employees in the back of the lot. Are you going to have an escort for people who have to go back there at nighttime when they are leaving their shift? I'm just concerned about that many cars being that close to that huge traffic pattern and the fact that you are right off I-95 and one of the big things that people do when they are robbing and pillaging are that they jump back on I-95. That is a prime location for a target. I'm a little concerned about the cars getting in and out and I'm concerned about the employees parking in the back and/or customers that have to park along there. What kind of security do you have available?

Mr. Tease: We have probably been down to Dover to meet with DelDOT on four separate occasions. The process started off with us doing the preliminary traffic analysis that used the ITE Manual to generate the trips. We used a general hotel category which has the

highest generation rate because at the time there were several brands that were being considered and we were not sure which brand was going to be used in this situation. They received those traffic numbers. That is when we had the discussion about safety, signalization, and pedestrian access, the need for a traffic impact study and right-of-way dedication. They decided at that meeting that it didn't make much sense to do a traffic impact study. The area had already been studied to death. The roadway improvements had been made. There didn't seem to be anything additional that could be done. However, they did ask us to do several things. We dedicated right-of-way on Old Cooches Bridge Road so they now have uniform right-of-way going there. They told us that we are going to be expected to do a study and pay for the cost of pedestrian improvements crossing Welsh Tract Road along Rt. 896 and crossing Old Cooches Bridge Road. It will certainly involve ramps, crosswalks, and possibly, as Roy mentioned, pedestrian signalization.

And then they made it very clear, and Roy has mentioned it to us, that this plan cannot advance for consideration by Council until we have a letter of no objection from DelDOT. They want to see an actual entrance plan. They decided to call it a preliminary entrance plan for which there is no exact criteria. We took a shot and submitted a preliminary entrance plan and probably in the last week they have responded back and they told us several things they would like us to address. One is, we showed in the traffic diagrams that are required we showed the traffic from the proposed hotel. That is normally what we would do. They want us to go back and count the traffic for all three uses since they are all going to operate in concert with each other and report that back for their consideration. They also want us to give them all the site triangles for each one of these entrances. Normally that would be done at a later date. We are going to do additional traffic information for them. We are going to give them the traffic count we did in Bel Air and we are going provide this additional information on an entrance sheet which is something we normally do at a later date. So, DelDOT is looking at it very closely. They are going to make sure it is safe.

Another thing is, you mentioned half the people leaving during the peak hour of the road. I was concerned about how this is going to operate. Normally we would hire a firm or we would get some students to go out and count the traffic. I did it myself personally because I wanted to see how it operates so when we did do a study or if I stood up here and talked to all of you, I could tell you from my own experience of what I saw. We picked Bel Air out of many Candlewood Suites sites because the layout is very similar to the site we have here. It is in very close proximity to the interstate highway. It is in a major business corridor. It has another hotel immediately adjacent to it. So, there are similarities and the same size. The similarities were almost uncanny so that is why we decided to count it. DelDOT wants to know how many trips we generate during the a.m. and p.m. peak hours. We all have a general idea, like you mentioned, when people leave and come, but what I did was count from 6:00 a.m. in the morning until 9:00 a.m. and I counted from 3:30 p.m. to 6:30 in the evening. What I found that in watching the operation of a suites type hotel is there is no peak that jumps out at you. You can see from the counts that Lisa gave you, what I saw business men going out and getting in their car and going to a meeting, I saw, obviously, somebody else who worked at the business or company they are visiting, driving up in a car and picking them up, I saw laundry delivery, I saw a taxi coming to pick somebody up, but there was no surge at a certain time. I saw people coming out in suits with their briefcases at 9:00 a.m. I saw people go in at 2 o'clock all dressed up in their business attire and come back out and cook on the grill in the gazebo at 3:30 or 4 o'clock. So, it is not the typical trend of use that you see in these kinds of situations. It is spread out more over the entire day.

Ms. Sheedy: Does this Candlewood Suites have a University nearby? The reason I ask is, our traffic in Newark is noticeably – I live on 273, which is a major road – decreased in the months that the University is not in session and also during their breaks. I would probably say it is half from what goes by my front door.

Mr. Lopata: Bel Air is more of a suburban type community.

Mr. Tease: Whether the University or not is there isn't going influence the traffic coming from our site. I didn't count the traffic on the adjacent roadways in Bel Air, only the traffic going in and out of the site. We just tried to pick a situation where it is similar.

Ms. Goodman: I consulted about your safety questions while Mr. Tease was answering your question about the traffic questions. First, any employee that wants an escort can have one whenever they want. I think that is very typical for the industry. Second, we have an advantage here because they have an existing hotel operating on the site so they have 11 years of experience at this location. They report to me that they haven't had any issues of the safety type relating to parking or employees going out, concerns that you raised. I think that is a pretty good indication that that issue, hopefully, won't arise.

Mr. Osborne: Were other building materials considered? I know normally we sometimes joke about the use of brick in Newark and the over use of it, but I think maybe the recent trend down in this area has been the opposite. I was wondering if some of those materials were considered.

Mr. Tease: The architect couldn't be here with us tonight but I do know that the Candlewood Suites chain has prototype buildings and what they do is, everyone that is working on a particular location has access to a website that we can all get their standard details from. Very recently, in the past couple of months, they just posted new details with new elevations which reflected on what you see tonight. So, they just revamped their look, but all of the elevations and options that I saw included the use of stucco materials in a more contemporary looking structure like you see in those elevations. So, I think that is their standard. I don't think they considered any alternatives for this specific site but what is shown on the site is the Candlewood brand and identity that they want you to see when you approach the site. And, if you are a business traveler, it will give you the consistency of the look of the building, the way it operates, the way the rooms look, so that is why they want to standardize that.

Mr. Osborne: I realize it is consistent with the Howard Johnson's even on the same site. Even that building was renovated while the current owners have owned it and redone with stucco. It looks like a lot of cookie cutter brand hotels. Again, it is kind of the gateway to our city with people coming off of I-95 there. To me I think something maybe a little unique that stands out a little more and differentiates itself from the rest of the hotels in the area might be attractive.

I understand the parking areas are going to be reconfigured. Does that mean that basically all of the existing parking surfaces, even the ones on the south side of the existing Howard Johnson's, will be resurfaced in this project?

Mr. Tease: No, we are not anticipating that at this time. We are thinking that we are going to start right in this area here going this way. All of this parking will be reconfigured. We are going to stay away from the accesses on each side of Friendly's. We don't want to get involved with DelDOT on that. This area on the southeast end would pretty much remain untouched. Basically, this area here on this side of Howard Johnson's would remain untouched other than, there are places where the storm runoff is running off onto the adjacent neighbor and part of the fix that Lisa briefly related to that we have to repair the curb and we are going to put in a storm system that will pick off most of that water other than very, very high intensity storms and pipe it down into the DelDOT storm drain system providing DelDOT approves that. We have not approached DelDOT on that.

Mr. Osborne: This is just a general observation on my part; it feels like this property is kind of shoehorned into this area. I suppose a lot of this is because of the gas station property right there. I guess I saw in one of the elevations that there would be a planting of trees between the hotel and the gas station, maybe a fence as well.

Mr. Tease: Both. The franchise when they reviewed the plans asked that we put additional plantings and a fence because they would like to hide the view of the gas station for their guests also.

Mr. Osborne: What are those plantings? What kind of trees and what is the height of it?

Mr. Tease: I am not sure. The landscaping that is shown on this plan, and it is on the landscape plan that was include in your packets, is the minimum landscaping that is required

by Code. It gives the height of the trees and type of trees. I'm not a landscape architect. This landscaping between the hotel and the gas station will be additional landscaping that will have to specify, probably on a separate landscape plan as well as the Hotel Chain has landscaping right up against the front of the building also. Those will probably be two separate plans.

Mr. Osborne: That is a pretty tight area there, the distance between the corner of the building and the gas station building.

Mr. Tease: Yes it is. We actually were considering locations for the gazebo and Candlewood asked for it to be placed where we show it on the plan. The gazebo has a couple of different configurations anywhere between 15 ft. square and 25 ft. square. That is a very recent review that we got from Candlewood. That is why the gazebo is not shown on the original information you were sent. They requested that we put that there for the guests. So, we will work on detailing that area, but we feel confident that we can fit it in.

Mr. Osborne: Are these the same elevation drawings that Candlewood has seen as well?

Mr. Tease: Yes, and approved.

Mr. Osborne: I wondered if they would think differently if the picture of the gas station was in front as it appears when you are coming in the entrance.

Ms. Goodman: The Candlewood folks have toured the site. They are very well aware of what it looks like and have been involved in the design of the elevations and of the plan all along. The other thing I wanted to add, I talked briefly about the fact that currently right now there is truck parking here. What I didn't mention is, what happens here right now is this area is so big – you are talking about it feeling tight – that this gets used as an unauthorized turnaround for large trucks in addition to a parking area. So, one of the things we discussed with the neighborhood behind here is that issue will, of course, will be gone when and if this hotel is approved. That gives you both a sense of the size of that area, but also of one of the things that will be different on the site.

Mr. Osborne: I realize we have an Embassy Suites with another hotel on the site basically, but from a planning perspective it just feels like it is kind of shoehorned in. I don't know that there is anything really that can be done.

Ms. Goodman: It meets all of the setback requirements, all of the parking requirements, all the landscape requirements for the Code.

Ms. Brown: Talking about the landscaping, this hotel is going to be really tall, and I would think that there are going to be lights on in the rooms, so my concern is how big are these trees that border Old Cooches Bridge Road to give the neighbors who literally face this hotel some semblance of privacy and not having to look at naked people running around in their hotel rooms kind of thing?

Ms. Goodman: And likewise, most people in a hotel room draw their blinds for just that reason.

Ms. Brown: Not always.

Ms. Goodman: We can get you the answer to that. Obviously, you can only plant trees of a certain size if you want them to survive initially. If the City or you have specific thoughts about how big you would like to see these trees at maturity, and there are some conflicts there with how big they can get because of overhead lines and things like that. We would be happy to entertain suggestions from the Commission in your recommendation regarding that. Of course, there will be a fence.

Ms. Brown: You can plant big trees but they cost big money.

Mr. Lopata: Peggy, one of the things you want to look at is the east view. The windows look like hallway windows to me.

Ms. Brown: But still, there is light and stuff going on.

Mr. Lopata: The long front is not the side they are going to see, at least from Cooches Bridge Road.

Ms. Brown: But, that is the stairwell that will be lit all the time.

Mr. Bowman: If there are no other questions or comments from the Commission, we will open this item for public comment. I have five written requests. Those will be taken in the order in which I received them and then I will open it up to people who haven't submitted a request.

In light of the fact that we are already into this meeting an hour and a quarter and the Planning Commission has another rather complicated issue on the agenda, I am going to ask each person to limit their comments to five minutes and the Chair will reserve the right to cut that further if we get too lengthy. Also, if you would, if you are essentially repeating the same things that the person said before you, please don't do it.

Mr. Robert Loyd: 1202 Old Cooches Bridge Road. I am the next door neighbor to Howard Johnson's and the relationship has not been too good. Howard Johnson's tore out the fence that I had between them and me. They refused to replace the fence. I have had trash thrown in my yard ever since. Something happened that I think this group and particularly my neighbors should know about, the management of this Howard Johnson's previous management, I went to him and told him the City ordinance asked that the fence be put in between them and a private property. He told me real quick that Howard Johnson's was bigger than the City of Newark and the City could not give them any instruction. This is what I want you to know about, he came up a scheme to get rid of me. He came over to my yard and told me that a limb had fallen off of one of my trees and damaged a car, therefore, I had to pay for the expenses of the damaged car. I told him no way. So, then he said he was going to sue me and clean out everything that I had. He came over every other day to remind me that he was going to sue me and take every nickel I own. He even had the gall to send his wife over and she wanted to go through the house so that she would know how to decorate it when they moved in on it. That is the kind of management that Howard Johnson's had. I think this group ought to know that. I'm still not going to have a fence.

Mr. Lopata: We are requiring a fence.

Mr. Loyd: I am very much opposed to the hotel because that is going to add an acre or two (inaudible) and right now flood waters have wiped out the worthwhile plants in the back of my yard. The flash floods are just going to be worse.

Ms. Arleen Lyons: 8 Edjil Drive. I am around the corner from there, but I will be able to see the hotel from my house and it is going to block my view of Iron Hill which is so beautiful in the fall. One of things I don't think anyone mentioned about this traffic is there is an industrial park down the road from the hotel. A lot of traffic comes from there at peak hours, residents that are coming back into the development at the end of the day from work, and I even have a lot of people who drive through the development to eliminate the light where Matilda's is and they want to get out to Route 4. So, we have traffic coming in on that side road that they are talking about keeping and you have traffic coming out of the hotel that has to cross over the traffic that is coming in, and there is no light, there is nothing there. So, I can't understand why there is no traffic study.

Then, the gas station. Nobody wants to sell it, okay. Nobody knows what is going to happen to that property. Will it become a gas station again? Can you guarantee that it won't? Isn't that a hazard? Aren't there codes that say you can't have building with window close to a hazardous business? I think there are. So, I'm wondering what is going to happen to that.

Have we been told that Howard Johnson's current hotel is going to stay there? We don't know the future of that hotel. Are they going to eventually decide that they don't want it and do something else like build townhouses on that property and sell it? We don't know

yet. So, I don't think we need to shoehorn this other hotel into this corner so close to all the traffic that goes by. I am a little further back from what the neighbors that are right directly behind it. So, they are really going to have to look at this big white elephant there. You can't plant trees that are going to cover it all. I don't care how high you go. You aren't going to have 67 ft. trees there. The trees and the leaves are going to get on the road and then it is going to be slippery in the winter time when the leaves fall. I just don't think it should be there. Maybe the City should make a plan with the management and build this hotel out on Elkton Road near the Home Depot away from residences. I think that is an ideal location.

Ms. Barbara Patterson: My address is 1111 Old Cooches Bridge Road, which faces directly in front of this hotel. As Arleen stated, nobody has addressed the industrial park at the end of our street where major trucks come and deliver. I consider this a one way in and a one way out situation. There is no way you are going to get the amount of cars from the industrial park from a major hotel.

I am going to talk to you from another perspective. I have been in the travel and tourist business for 19 years. The amount of employees a hotel of this magnitude has, even the Howard Johnson's has shuttle service from the airport to their hotel. I am also concerned about how many employees they will have to go in the back to park. Also considering the cost of our usage with the lights, is that going to affect our bills, our property taxes. There are so many things that need to be answered that we have not heard from anyone regarding these matters. I also wanted to address the statement that was made about that being a cheap sleep hotel. \$100 a night is a cheap sleep. If you go to the Howard Johnson's today and try to get one of those rooms, it is going to be about \$100 a night. A suite hotel is not going to be \$100 a night. And I also feel that there is no need for that size building to be directly in front of my view.

Mr. Rick Ramsey: 1204 Old Cooches Bridge Road which is right next to Howard Johnson's. I have been dealing with their runoff for years and years and years. I am also speaking on behalf of my mother-in-law, Gail Botluk, who actually owns that property. Howard Johnson's has come to me and has worked out a drainage system, but at the same time DelDOT does not want to accept responsibility for all traffic that is going to come in and out of there. They don't want to put a yield sign on the off ramp. I can't even get DelDOT to come out and cut the grass in front of Rt. 896 right there because, apparently, they are making cuts. There should be a lot of lights there from Howard Johnson's going across the street and going across Welsh Tract Road. As far as trees going across the back side of the property, Howard Johnson's says they are going to put up more trees and that is good, but at the same time more trees can be bad because they are going to block the image of Iron Hill which is a nice place to look at. So, if they are going to put a six-story hotel up there, I guess we ought to be thankful it isn't a seven-story hotel. The parking that is involved in that lot is they have improved it 100% because it is very bad now the way it sits. If they are going to eliminate what they say they are going to eliminate and put it the way it is now, I think they ought to go ahead and try at least to improve the lot for the residents in the front of it as best as they can.

How many people are going to walk across the street from there instead of staying in their hotel because there is no restaurant? So, what extra revenue they are going to bring, nobody knows yet.

Howard Johnson's has definitely complied with a lot of the things that are required by the Commission. If they are going to go forth with this project, I think they need to talk to DelDOT a lot more, and DelDOT needs to really make their influence into this project because DelDOT, in my opinion, has dropped the ball on a lot of projects throughout Newark, New Castle, Kent and Sussex Counties. The roadwork all across the State is terrible on DelDOT's behalf. Maybe they are making cuts, maybe they are not making cuts, but they are not even paying attention to the traffic pattern here. And, the traffic pattern from DelDOT, in this particular situation, needs to be looked at whether it is more lights, more walkways, more yield signs, and nobody has ever considered the industrial park.

As far as the hotel goes, it's a great idea. It is going to bring more revenue to the City of Newark, but I think they ought to definitely consider a hotel with a restaurant in it to bring revenue into that particular area.

Mr. Hank Plitt: 210 Edjil Drive. I am going to speak from a market position on this thing. I have lived in places like this for 30 years. What is the market focus on this hotel? Is it for overnight, night-to-night traveling salesmen or will you have contract people, contracts with organizations that would provide space for people who would be semi-permanent residents here. I have heard a lot of stories about the Howard Johnson's next door and some of the characters that they have in there. I was wondering if this was going to be the case because we have enough characters in the neighborhood walking around. In fact, a certain organization in the City calls the place down at the end of our street a zoo. I hope nobody takes offence but that is the comment. So, I am concerned about the people here. This has been a very quiet neighborhood for years and years, then in the last few years we have had all sorts of funny things going on, including our house was burglarized, so have other houses, drive by shootings and that sort of thing. I don't want any more characters like that living in the area. So, this is a consideration that I would like to have given to this.

As far as the hotel is concerned, for 101 rooms, it looks like a shoebox. I just wonder what the people are going to think about when they are down at the west end of the hotel right next to a gas station. People don't want to sell gas stations because they have to be remediated if they have to be sold, which means digging up or demolishing the whole place and then refilling it and using it for some other purpose. If that would have to be the case, that place would be a mess for a long, long time – six months or more.

It would be interesting to know what the square footage would be in the room. There are no sidewalks here and no sidewalks on the other side so where are the people going to walk? These are all sorts of considerations that I think have to be decided ahead of time, not after the fact and it has to start right here with this committee. I hope that this is all going to be taken under consideration.

I've dealt with DelDOT, too. My main concern is who is this organization catering to? If you really want to turn this place into something, get some of these characters that they rent rooms to for periods of time, week, month and that sort of thing because we have had a few of those cases around here lately.

Mr. Richard Lonie: 205 Edjil Drive. When I came here tonight, I had no intent to make formal comment, and as I sat through the presentation all these questions kept popping up. So, I am going to ask some of those questions. I don't expect you to answer them, but perhaps, you could all think about them. I will start with this white space known as the gas station. If I were developing this property, I would love to have that white space because it brings everything together. The comment was made that they tried to purchase that, but the owner currently had the property leased. If I were the owner, I would want to know how long was that lease, and how much was it, and could I propose an offer that would be beyond to that? The second part of that, if we go as we are, what happens after that lease runs out?

The second matter is trucks we have now at Howard Johnson's. Just as a casual observer, I think that the only thing that appears to me that keeps Howard Johnson's afloat are these trucks. If you ever go down there, they are spread all over the place. So, we talked about parking spaces and how many there would be. I assume they are talking about cars. So, how do you equate a car spot to a truck spot that is spread there? And, the other comment that the attorney made is this is loosely defined and these trucks move about as they wish. If all of this is defined parking spots, how do these trucks move about as they wish? How do they get in and out and so forth? The other thing about the trucks, this is kind of interesting, I think someone said that in order to park your truck there, you had to be registered at the hotel. If you are parked there, your registered at the hotel, does that mean that you sleep in the hotel or sleep in the cab, because every one that I see coming in and out of there are sleeping in their cabs. It's not just the drivers that are sleeping in those cabs. There are a lot of interesting young females that seem to float around and my wife is always telling me about. I never see them. It would be interesting to know more about that type of activity. So, those are the questions I have about the trucks.

Most of us, I think, live in Newark. You may try to get on I-95 between 7:00 a.m. and 9:00 a.m. and go to Wilmington or maybe you could try to come back from Wilmington between 3:00 p.m. and 7:00 p.m. or you might try to get on I-95 any time on a Saturday or Sunday. Go down to Bel Air and look at a similar situation and tell me it compares to the traffic flow on I-95 by Newark next to this area. That does not even include all of the special University of Delaware weekends. On Homecoming you have to go as far as Bel Air to get a place to stay.

My last comment is about all this pedestrian flow and the accommodations that we made for that, the overpasses and so forth. What overpass you will have make between the parking lot by Howard Johnson's and the liquor store on the corner because that is where your constant flow of traffic is pedestrian wise.

Mr. Bob Privon: 310 Lark Drive, Arbour Park. I am also concerned about traffic. We haven't really addressed traffic on some of the streets that would run parallel to Rt. 896. I am particularly concerned about W. Chestnut Hill to Otts Chapel Road, and I believe it is Welsh Tract Road that runs perpendicular to Rt. 896 and adjacent to the Boston Market. A hotel of this size with its customers and employees and guests would definitely increase traffic going down towards Elkton Road and I-95 heading south. Those roads are very, very narrow. There are absolutely no traffic lights between Rt. 896 and Otts Chapel Road. We continuously have cars up and down speeding and that just presents a danger. I would like to see DelDOT do a study and possibly think about widening those roads and putting in traffic lights and possibly sidewalks.

Mr. Clayton Foster: 5 Anita Drive. I would like the Commissioners to consider the traffic impact on McVey School. We haven't heard anything about that. A lot of people go by to get out to Chestnut Hill Road to get out of the subdivision and you go right around McVey School right where they are loading kids on buses. I would suggest that if you increased the cycle time on that light on Rt. 896, you will decrease the flow of traffic at McVey School. Also, I would mention that I've been on the Board of Adjustment for the City since the 1970s and I have never seen a meeting where so many questions have been unanswered. I just can't imagine that you are going to vote on this tonight. I would suggest that you table it and try to get some answers to your questions.

Mr. Chuck Wooters: 12 Donna Drive in Yorkshire. My concern is about that truck turnaround. I am not a truck driver so it doesn't affect me directly. However, coming in and out of that development on a daily basis, I know that trucks use that turnaround as a because, for one thing, it is so close to getting back on I-95. The other thing is it eliminates them from having to drive into Newark or into some of the developments that are close by. The question is where are they going to turn around now? Are we going to have them go into the developments to find a place to turn around or some other strip mall or go into the City to search around, or is DelDOT planning to address that in the future?

Mrs. Jean White: 103 Radcliffe Drive. I actually was surprised that this was going to be a full suite hotel because of the Embassy Suites nearby and the Homewood Suites. I am curious to know what their average occupancy is where I did not realize they were full up and, therefore, there was a market for another all suites hotel. This is a very tall building, six stories high. It might be better to be only five stories high, but the thing that concerns me the most and certainly should concern those that live very close to it is how close it is to Welsh Tract Road, the entrance road into the neighborhood of many of you that are here in the room. After the Embassy Suites Hotel was built, I happen to be talking to a man who was a planner from another area and he mentioned to me complete surprise that it was allowed to be built so close to Christina Parkway because in the area that he represented, that would never would have been allowed. I feel the same issue is here. Yes, I know that BC zoning has zero setbacks, but when I looked at the blueprints where the scale was one inch is 50 feet, it looked to me that the side of the hotel, which is the length of the hotel is just less than 20 feet from the property edge. There is a concept that in towns, that the taller the building the further the setback should be in terms of mitigating the affect of such a high building. A good example of this where this works is the Main Towers on Main Street, which is a seven story building, but as probably everybody here knows who has gone down Main Street, that is setback way, way back so the visual impact is completely decreased. So,

actually, I think, somehow, the developers, if they are going ahead with this hotel, should find a way to, perhaps, move it. Here you have sort of a fishbone parking area here. If there were some way to move that hotel back there or there, there would be a much greater setback from Welsh Tract Road in terms of the impact. It would even be better if it could be reduced to a five story hotel with the same footprint it might have to be 80 units. Therefore, there would be some more room for some green space rather than having this huge expanse of parking and macadam.

I wanted to briefly touch on the traffic generation by the proposed hotel. I had gotten a copy of the Planning Department report. I did not get the booklet that apparently the developers have – the spiral booklet. First, I wanted to point out that on page 5 at the bottom, there is an area that is missing.

Mr. Bowman: That was corrected tonight prior to the meeting Mrs. White.

Mrs. White: I just came in and I didn't realize that. DelDOT says that the traffic study no traffic study is merited because DelDOT has determined that the developer cannot improve the intersection. DelDOT has also indicated that it does not have a verifiable level of service at this location. I think it is very important to get a present level of service at this location so one knows what is dealing with and to get this for the developer to pay for that. I seem to remember something in the County where a development was denied or made to downsize over this very type of issue where there is a failing level of service.

Finally, the color elevations, I found them very "blah;" I guess I could say. I'm really not a fan of too much stucco, but it seems there are so many things that could be done to make this building much more visually attractive on all sides. It seems rather lifeless.

Because the applicant needs a special use permit, City Council has the right to turn this down if it doesn't meet certain criteria. One of them that was mentioned is that there is no negative impact from the surrounding area. Well, although it might be asserted, there is no negative impact. It seems to me, there are plenty of negative impacts that have been brought up by others here at the meeting tonight.

Mr. James Brown: 1226 Old Cooches Bridge Road. That is the sixth home on the right past Howard Johnson's. We have had in the past a home invasion, robberies and people trying to put you down.

I am concerned with the foot traffic. We have prostitutes working the area. We have people walking up and down the road. There are a few of us residents that walk on that road also. Sometimes the people you see down there just can't figure they would be in that area.

On the traffic flow, my gripe is on Bellevue Road off of Cooches Bridge Road that goes toward Route 72, there is a railroad track crossing that was blocked off. There are two ways to look at it. The traffic flow through the development to the employees down off Bellevue Road, there is a lot of it that comes through there. You can sit up there in the morning and see them roll through and the same thing at night. It makes it hard to get out of my driveway when those people are coming and going from work mainly because they don't observe the traffic stop signs. I back into my driveway and it upsets a couple of people, but that is their problem. The traffic flow on Rt. 896 off of Welsh Tract Road -- there was a jug-handle put on Welsh Tract Road next to the liquor store and that is where the tractor trailers are supposed to turn. Anybody that got off of I-95 at the wrong place can turn around and go south on Rt. 896. Nobody uses it very much, only the truckers and people who want to stop and pick up a six pack at the liquor store. You have at least handicapped people that are wheelchair bound that live on that road. There are children on that road. I have to admit that the truckers take their time going around the curves, but there are a lot of other commercial traffic that are flying up and down that road every day all day long. I would like to see that slowed down. I don't know how you would do it because it would be a problem for the residents with the noise and all.

I'm concerned about the handicapped and I am concerned about the people that may be low income living at the hotel at government expense.

Mr. Jim Gitney: 12 Edjil Drive. The one thing that hasn't been brought up is there are no buildings in the area that are six stories until you get up to the Bob Center or way into town. That hotel is going to stick out like a sore thumb in our full neighborhood. You not kidding anybody that you are going to put trees up to hide this place. We will all be dead and buried in our graves by the time you get a tree to grow to 63 or 67 feet. That is one of the things.

The second thing is, when the traffic comes out of the industrial park, I live on Edjil Drive and I have to come up Welsh Tract Road and make a left-hand turn to get to Edjil Drive. I have sat at that intersection for three or four minutes. When the cars come around and that whole area there is filled up and they can't make it through one traffic light change now. So, if you add one more car, it is going to make it worse than it already is.

Ms. Goodman: Thank you Mr. Chairman. I'll be very brief. We have a lot of things and I am not going to go chapter and verse through many of the things.

This is a special use permit. It is not a rezoning. This is the most intense commercially zoned property – general commercial – for the City of Newark. This plan meets all the zoning requirements. It is consistent with the Comprehensive Plan. It meets DelDOT's criteria. It meets the City criteria. The proposed hotel is well under both the height and the story limitations for this zone. The zoning permits 7 stories and 80 feet and we are at less than 70 feet and really the hotel is about 54 feet in all but the parapet and six stories. The current hotel does no Section 8 business. Two things, we have heard a lot about folks concerned about a new commercial business up close to their residences, but those residences all back up right to or close to a commercial strip. That commercial strip has been there since any of us, I dare say, can remember and that is how it is zoned. And, that is how we want major highways like S. College Avenue where it is close to I-95 to develop. We want those amenities to be here. We want a hotel or any new business ideally to redevelop an existing site, not to go out and gobble up another green site somewhere on the fringes of the City some place else where there is green.

Finally, as to traffic, you have heard a lot of concern about traffic, and I know you folks sit here every month and listen to folk's concerns when new things come. We have objective criteria to judge traffic and especially in a town where we want economic development and where we have already zoned and made those decisions. If we don't apply objective criteria, we get into the weeds of -- I think it's bad because I might think that waiting at a light for two minutes is an eternity and someone else might not. I might think that anything that happens near where I work or where I go to school or where I live shouldn't happen. We have to look at objective criteria and the Code provides those. We would submit that this is not only good economic development for the City, but meets all of the objective criteria.

Mr. Bowman: We will bring it back to the members of the Commission. Does anyone on the Commission have additional comments or questions for either the Planning and Development Department or the applicant?

Mr. Begleiter: One brief question for the developer, please. Lisa, just for the record, once this hotel is developed, if it is developed according to your plan, is there any plan for continuation of large truck traffic to be parked anywhere on this property? Are the 18 wheelers going to be able to continue to park on this property?

Ms. Goodman: No, there is no accommodation for large truck parking, which isn't to say that someone won't drive a truck in on occasion and take up eight parking spaces. You can't prevent someone from doing that.

Mr. Begleiter: If they aren't a hotel guest you can't prevent them from doing that?

Ms. Goodman: Yes, absolutely and you can have them towed. And, now there is a sign there that says that trucks that are parked that are not hotel guests will be towed. I talked to my client and right now they estimate that their revenue from truck traffic is 5% or less. So, they are not at all concerned about that revenue. That is just not a big part of their business.

Frankly, they accommodated truck traffic because they had the space to do it and that was really why.

Mr. Osborne: We have heard a lot about the traffic and one of my concerns is, if I am a guest at either hotel and I am leaving and I choose to exit out the Welsh Tract Road exit rather than the Rt. 896 exit, I am making a left turn out of there, to me it looks like that building is obstructing my view when I am looking for oncoming traffic coming out of it. Does it meet the setback requirements in terms of how far back it is from Welsh Tract Road?

Mr. Lopata: Yes.

Ms. Goodman: Additionally, in order to get our DelDOT entrance permit, we have to do sight triangles, we have to demonstrate to them that there is a clear line of site for that entrance before they would ever issue a letter of no objection for the site entrance.

Mr. Osborne: Is that one of the items that is holding it up?

Mr. Lopata: That is one of the conditions of our recommendation. It is in our 12 or 15 points that I skipped over relatively quickly in my opening summary. The letter of no objection will be required before this goes to Council.

Ms. Goodman: And we will have that before we go to Council or we won't go to Council.

Ms. Brown: The negative impact issue. Please explain this to me in a little more detail.

Mr. Lopata: One man's negative impact is another man's wonderful economic development project. So, we have to try to evaluate from a planning standpoint is to examine the proposed use in the context of where it is located. You would be hard pressed in Newark, quite frankly, to find a site that is more suitable from a land use perspective for a hotel than this one. Taking into account that there are traffic issues on that roadway and we will talk about those as we continue to review this project. But, you have a hotel on the site, you have a restaurant on the site, and we have another hotel complex, down the road from this one with six story hotels. It is almost identical to the proposal before us with a similar configuration within a stone's throw.

Is there a visual negative impact from the people that live in the homes on Old Cooches Bridge Road? Of course there is, but there living, as has been mentioned, behind a commercial strip. There is just no denying that.

This is a conditionally permitted use and, therefore, you have to ultimately say. The final decision is up to the Planning Commission and Council. From a Planning and Development Department standpoint, in this commercial neighborhood, this use more than fits. Finally, considering the other uses that are permitted in BC, we are pleased to see a use of this type rather than some of those that could be approved without a special use permit.

Ms. Brown: My question, then, is, would the owners be willing to shorten this building to two or three stories as opposed to five stories because I do think there is an issue with traffic. There is an issue with visual impact and there seems to be an issue from what I am hearing with residents a crime issue of things associated with the hotel, perhaps. So, would they be willing to make it shorter?

Ms. Goodman: It is not even a question of willing. You can't build a hotel like this with that few rooms. The economics just don't work. That is why you see the other hotels like this – the Embassy Suites, the Homewood Suites, the hotels up across from the Law School on Concord Pike. The economics of a hotel like this are well-known and you just have to have the right size to make it work. Otherwise you can't build it because you can't finance and you can't run it.

Mr. Begleiter: I would like to suggest that we include in our recommendation tonight a formal recommendation asking the City to request again of the Delaware Department of Transportation a comprehensive traffic analysis of not only the intersection of Welsh Tract

Road and Rt. 896 but all of the intersections near this property including the ones that are currently impacted by the other two large suites hotels in the area so that City Council can get some data that is accurate and pertinent to this kind of development to determine whether the incremental affect of this hotel's trips tip any kind of balance in terms of traffic safety or signal timing. When I say all the intersections near the property, I would include the intersection of Welsh Tract and Old Cooches Bridge Road so that we determine whether the long-standing traffic of the industrial park, which has been going up and down that road for many years, is in any way tipped over some balance by this particular development.

Mr. Lopata: Let me just make a suggestion because I think a good point by Mr. Begleiter. Perhaps as part of that exercise, instead of counting Bel Air, we might count a.m. and p.m. traffic at the Embassy Suites, Homewood Suites, Sleep Inn and the TGIFridays. We can't get a better comparable. It is a little bigger and you would have to do some kind of adjustment for the size, but I think that would give us a very good picture. Because, I will tell you quite frankly – I am not trying to sound like an advocate – but I have gone in and out of that configuration of businesses on numerous occasions and I almost never see a relatively high flow of traffic. I will say, I don't do that at the peak hour time. So, I think that is why it would be very interesting to find out what is the level of traffic coming out of an existing configuration and include that before this goes to Council.

Mr. Bowman: I would suggest also, Ralph, that the intersection of Janice and Edjil be looked at as well because this takes into account traffic that bypasses the Rt. 896 light by going through the developments.

Mr. Begleiter: I think all the intersections in the vicinity of this hotel, if we are going up as far as the Homewood Suites and the Embassy Suites.

Mr. Lopata: I'm suggesting that, not so much the intersection, just the count for that area.

Mr. Begleiter: We can't be in a position of telling DelDOT exactly which intersections to include, but I think the sense that we ought to be conveying is that it ought to be broader than just the intersection of Welsh Tract and Rt. 896. It shouldn't just be that one intersection. It may turn out that the results are the same. I certainly don't know that. It may be that this doesn't tip any balances because it is not going to produce that many trips, but we don't know that until we include those other traffic aspects to it.

Mr. Osborne: Just a point of clarification. Roy, the Planning and Development Department has recommended in the report here that two fences be constructed.

Mr. Lopata: One fence.

Mr. Osborne: One fence only on the south side that runs along that parking area?

Mr. Lopata: Yes.

Mr. Osborne: But not along Old Cooches Bridge Road?

Mr. Lopata: That is going to be landscaped. I don't think there is a fence proposed there.

Mr. Osborne: But, the developer is proposing a fence along Old Cooches Bridge Road?

Mr. Tease: The Planning and Development requested a fence along Old Cooches Bridge Road and that will be done. The hotel brand Candlewood requested that we have a fence adjacent to the gas station.

Mr. Osborne: That is two.

Mr. Lopata: I am talking about a fence on the south side.

Mr. Tease: There will be one here and one here. There are existing evergreen trees along here and we are supplementing the same.

Mr. Osborne: The existing trees were just trimmed aggressively. There is not much protection now between the residents across the street and the hotel.

Mr. Tease: Along here?

Mr. Osborne: Yes.

Mr. Tease: Can you walk through there?

Mr. Osborne: I would strongly recommend a fence. I think what I am hearing is that the residents might like some additional barrier if this plan were to move forward. I don't know if a fence is any better than the view of the hotel.

Ms. Goodman: I just spoke with my client and we are happy to entertain a fence. So, if you would like to make that recommendation for a fence also along Old Cooches Bridge Road, please do and we will be happy to go back and look and see how that can be accommodated.

Ms. McDowell: I think it should be part of the recommendation.

Mr. Bowman: We are about at the point that we will entertain a motion. You can certainly add that to any motion that is made.

Mr. Osborne: As part of the proposed addition of the DelDOT traffic study, I think heavy consideration should be given to implementing a "No U-turn" sign on the southbound lane of Rt. 896 turning onto Welsh Tract Road to enforce the usage of the jug handle that is already there.

Mr. Lopata: That is not a traffic study, Rob.

Mr. Begleiter: I think at this point we have to let DelDOT do its job.

Mr. Osborne: I am just noting it for the record that I think that that is an important consideration.

Mr. Begleiter: I don't think we can tell them how many seconds to make the traffic light.

MOTION BY BEGLEITER, SECONDED BY McDOWELL THAT THE PLANNING COMMISSION TAKES THE FOLLOWING ACTIONS:

- A. RECOMMEND THAT CITY COUNCIL APPROVE THE CANDLEWOOD SUITES MAJOR SUBDIVISION AS SHOWN ON THE LANDMARK ENGINEERING, INC. PLAN DATED APRIL 22, 2009, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT; AND,
- B. RECOMMEND THAT CITY COUNCIL APPROVE THE CANDLEWOOD SUITES SPECIAL USE PERMIT, AS SHOWN ON THE LANDMARK ENGINEERING, INC. PLAN, DATED APRIL 22, 2009, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT, WITH THE FOLLOWING ADDITIONAL CONDITION: THE DELAWARE DEPARTMENT OF TRANSPORTATION BE REQUESTED TO CONDUCT A COMPREHENSIVE TRAFFIC ANALYSIS OF THE TRAFFIC AND ITS IMPACT ON NEIGHBORING RESIDENTIAL NEIGHORHOODS AND THE NEARBY INDUSTRIAL PARK, AND AT THE INTERSECTIONS NEAR OR IN CLOSE PROXIMITY TO THE HOTEL SITE, BASED ON THE TRAFFIC EXPECTED TO BE GENERATED FROM THE HOTEL, AND AS PART OF THIS ANALYSIS, THE DEVELOPER TO CONDUCT TRAFFIC COUNTS AT THE NEARBY HOTELS AND RESTAURANT PROPERTIES AT THE NORTHWEST CORNER OF THE INTERSECTION OF S. COLLEGE AVENUE AND THE CHRISTINA PARKWAY.

AMENDMENT TO MOTION BY McDOWELL, SECONDED BY SHEEDY TO REQUIRE A SIX FOOT HIGH SOLID FENCE ON THE EAST SIDE OF THE HOTEL PROPERTY ADJACENT TO OLD COOCHES BRIDGE ROAD.

VOTE ON AMENDMENT TO MOTION: 5-1

AYE: BOWMAN, BROWN, McDOWELL, OSBORNE, SHEEDY

NAY: BEGLEITER

ABSENT: DRESSEL

AMENDMENT TO THE MOTION PASSED

VOTE ON MOTION AS AMENDED: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, McDOWELL, OSBORNE
SHEEDY

NAY: NONE

ABSENT: DRESSEL

MOTION PASSED UNANIMOUSLY

Mr. Bowman: Ladies and gentlemen, one other comment, please recognize that the Planning Commission's job is one of recommendation. We have to follow the City Code and standards that means in many cases that the people sitting up here have to pretty much put their personal feels aside when we look at the facts that are before us. So, you now have an opportunity when this comes before Council to do the same thing you did tonight because they are the folks that have the final say. We can only deal with what is before us in terms of facts. It is very, very difficult and I invite any of you that would someday like to serve in a position like this to do so because you will find out that the show is on a little bit different foot when you sit up here. So, I thank you all for your interest in the community tonight and for coming out and making your comments. I'm sorry that we couldn't drag the public comment portion out, but you can recognize that if we did so, we would still be here at two o'clock tomorrow morning hashing over the same things.

3. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AND THE SUBDIVISION AND DEVELOPMENT REGULATIONS UPDATING NEWARK'S ENVIRONMENTAL AND AESTHETIC STANDARDS, INCLUDING WETLANDS AND RIPARIAN PROTECTIONS AND BUFFERS; STEEP SLOPE PROTECTIONS; LANDSCAPING AND MATURE TREE PROTECTION; AND ESTABLISHING A DOWNTOWN ABOVE GROUND UTILITY IMPACT FEE.

Mr. Lopata: Mr. Chairman, we have been here for 2 ½ hours and I don't know how long most of you can sit but my back begins to give out. So, what I am going to suggest we do is start the process tonight. I will briefly summarize what is before you and then my suggestion would be that we, perhaps, have some general discussion of the first item, if you want to do it that way because they are broken down into somewhat discrete sections, and perhaps move forward through that or simply have my general introduction, answer some general questions and bring this back at future meetings on kind of a rolling basis.

Because we have other development projects in the pipeline, we are going to continue to have meetings where it is going to take some bit of time to get through this. Although these things are important, we are not required to get everything adopted within relatively short timeframe. Unless someone has an objection to that, I would like to suggest that we do that and try not to bite off more than we can chew this evening. Is that okay? I will tell you that for your next meeting we already have three items.

This document is an outgrowth of the work you all did in the workshops you had beginning in 2007 and 2008 as we put together our Comprehensive Plan. That set the stage for the work we are beginning this evening. The work from the White Clay Creek

Wild and Scenic River Management Committee dovetailed with that to produce, to a considerable extent, what is here before you this evening.

One quick editorial thing before I begin. There is a mistake on page 14 regarding the proposed utility impact fee -- the commentary refers to a 75/25 recommended cost split between the City and the developer and the draft ordinance in the report shows a 50/50 split -- we are recommending a 75/25 cost sharing between the City and the developer. So please note that change.

Mr. Lopata then summarized his report to the Planning Commission which reads as follows:

“Based on the Action Items in the October 27, 2008 City Council adopted Newark Comprehensive Development Plan IV, the Planning and Development Department has provided below a report with suggested Subdivision and Development Regulations and Zoning Code amendments for the Planning Commission’s review and recommendation to City Council. These proposals are intended to expand and upgrade Newark’s environmental protection standards, especially as they relate to the critically important safeguarding of our community’s water resources, as well as, to establish a new program to improve downtown Newark’s “visual” environment. Moreover, these suggestions are also intended to clarify and refine certain existing regulatory controls. The recommendations, in the form of draft Code language amendments, involve changes or new regulations impacting the following:

- Wetland Protection and Buffers
- Riparian (Water Course) Protection and Buffers
- Steep Slope Protection
- Landscaping, Landscape Screening and Mature Tree Protection
- Downtown “Above Ground” Utility Impact Fee.

Because the Planning and Development Department recognizes that what follows is a lengthy and in some respects complex set of proposals, the Commission’s review of these matters at the August 4th meeting should be understood to be the beginning of the process. We anticipate, therefore, that the Commission may decide initially to make recommendations for or against, to amend, or to table all or some of these Code amendments.

In any case, before presenting our Planning and Development Department report, the Department wishes to express its appreciation to Linda Stapleford, River Administrator, White Clay Creek Watershed Management Committee and the Committee’s consultant, John N. Gaadt of Gaadt Perspectives, Environmental Planning and Consulting of Chadds Ford, Pennsylvania, for the detailed background information, suggested ordinance language and related materials they provided for the this report. We also wish to thank Joseph Charma of Landmark Engineering for his assistance and comments concerning these proposals. The proposed Code language amendments, of course, are the responsibility of the Planning and Development Department.

Source Materials

To provide background information, sample ordinance language and related materials concerning this set of proposed environmental and aesthetic standards revisions and updates, the Planning and Development Department consulted the following reports, studies and ordinances from other communities:

Reports/Studies

Scott Bode and Jeri Gray, Maintaining and Restoring Urban Riparian Buffers, University of North Carolina, n.d.

Michael Davidson and Fay Dolnich, A Planners Dictionary, American Planning Association, 2004.

Christopher J., Duerksen and R. Matthew Goebel, Aesthetics, Community Character, and the Law, 1999

Ellen Hughes and Markelle Smith, Riparian Buffer Zones: Functions and Recommended Widths, Yale School of Forestry and Environmental Studies, 2005

James McElfish, Jr., Rebecca Kihlslinger, and Sondra Nichols, Planners Guide to Wetland Buffers for Local Governments, Environmental Law Institute, 2008

Marya Morris, ed., Smart Codes: Model Land - Development Regulations, American Planning Association, 2009

Betty Otto, Kathryn McCormick, and Michael Leccese, Ecological Riverfront Design: Restoring Rivers, Connecting Communities, American Planning Association, 2004

Sara Palma, Travis Morrison, and Daniel Woodward, Waterfront Buffer Zones, University of Vermont, 2008

Gary O. Robinette, Local Landscape Ordinances, Community Landscape Development Series, 1992.

City of San Diego, California, Council Policy, Underground Conversion of Utility Lines by Utility, 2002

Ten Towns Committee, Model Stream Buffer Conservation Zone Ordinance, Great Swamp Watershed Management Committee, New Jersey, 2002

Commonwealth of Virginia, Report to the State Corporation Commission, Placement of Utility Distribution Lines Underground, 2005.

Center for Watershed Protection, Buffer Model Ordinance, n.d.

Ordinances

City of Acworth, Georgia, Tree Ordinance, n.d.

Town of Amesbury, Massachusetts, Local Wetlands Protection, 2008

City of Austin, Texas, Tree and Natural Area Preservation, n.d.

City of Boulder, Colorado, Franchise Agreement Ordinance-Public Service Company of Colorado, 1993.

Town of Castle Valley, Utah, Electric Utility Installation Requirements, 1992

City of Chipley, Florida, Code of Ordinances, 1992

City of Columbia, Tennessee, Aquatic Buffer Regulations, 2007

Village of Croton-on-Hudson, Steep Slope Protection, 1992.

City of Geneva, Illinois, Tree Preservation Definitions, n.d.

Borough of Gibbsboro, New Jersey, Stream Corridor Protection and Steep Slope Ordinances, 1986

City of Hudson, Ohio, Landscape and Tree Preservation Requirements, n.d.

City of Minnetonka, Minnesota, Wetlands Buffer, n.d.

City of Myrtle Beach, South Carolina, Tree Protection Ordinance, 2000

New Castle County, Delaware, Unified Development Code

Town of New Paltz, New York, Steep Slope Protection Law, 2004

Pitt County, North Carolina, Riparian Buffer Protection Ordinances, 2006

State of Rhode Island, Model Streams/Wetlands Buffers Ordinances, n.d.

City of Seattle, Regulations for Environmentally Critical Areas, 2006

Town of Southern Pines, North Carolina, Landscaping and Buffer Requirements, 1989.

Precepts for Updating Environmental Regulations

The Planning and Development Department, Planning Commission, and City Council have had a long and successful history of establishing and amending Newark's land use and environmental regulations based on the following precepts, intended to make our ordinances simple to understand and easy to enforce. These precepts include the following:

- Whenever possible amend or revise existing regulations.
- Use straightforward language and clear definitions.
- Brief is better than lengthy.
- Design the regulations to fit our community.
- Target the regulations to meet the goal; that is, improving the quality of life for Newarkers.

The suggested amendments below, we believe, follow these precepts.

Wetlands

Newark's current wetlands regulatory tools are found in our Subdivision and Development Regulations. Sections 27-20(a)19 and 27-21(b)5(v) of the Regulations require that for all minor and major subdivisions developers must submit a wetlands report, in accordance with Appendix III. Section VIII of Appendix III consists of the following: wetlands delineation specifications (defining wetlands); wetlands boundary interpretation rules; standards for review of wetlands reports; and design alternatives for developments that may impact wetlands.

To update the portion of the standards that establishes the review criteria for wetlands reports, the Planning and Development Department suggests that the Planning Commission recommend to City Council the following:

1. Delete Subdivision and Development Regulations Appendix III, Section VIII (c), which reads as follows:

“(c) *Standards for review of wetlands reports.* In reviewing wetlands reports the public works director shall consider the following:

- (1) Whether the subdivision plan is sensitive to the wetlands identified on this site. Sensitivity to wetlands shall mean that the subdivision plan will

result in minimal feasible alteration or impairment to the wetlands characteristics and its existing contours, vegetation, hydrologic conditions, and will not cause significant degradation of ground and surface water quality.

- (2) Whether a subdivision plan that does not require the disturbance of wetlands on the site can be realistically implemented.
- (3) Whether reasonable design alternatives exist to minimize the disturbance of wetlands on the site.
- (4) Whether wetlands disturbance depicted on the subdivision plan accurately reflects those activities necessary to develop the site as proposed.
- (5) The quality of the wetlands that may be affected and the amount of wetlands to be disturbed.
- (6) Whether the subdivision plan complies with all other applicable floodplain, water resource protection area, wet areas, and related requirements of this code.”

and replace it with the following:

“(c) *Standards for wetlands design.* Because the preservation of Newark’s wetlands in an undisturbed natural condition constitutes important physical, aesthetic, recreational, water quality, health, and economic assets for our community, subdivision plans with delineated wetlands shall be subject to the following site design and construction requirements and review criteria:

Site design and construction requirements

- (1) There shall be minimal feasible alteration or impairment to the wetlands’ characteristics and its existing contours, and to its vegetation and hydrologic conditions; any such alternation shall not cause significant degradation of ground and surface water quality and quantity.
- (2) For undeveloped lands, a fifty foot wide buffer area surrounding the wetlands measured from the edge of the wetlands jurisdictional line shall be required. This buffer area shall consist of natural and minimally disturbed vegetation, with any such disturbance subject to the standards in subsection (1) above. A five foot wide pathway mowed to a minimum height of four inches through the buffer for pedestrian access to the wetland(s) may be permitted. For wetlands located on previously developed parcels, the buffer area shall consist of the area between the site’s impervious surface and the wetlands jurisdictional line.
- (3) Stormwater management facilities are permitted, as per DNREC’s Delaware Sediment and Stormwater Regulations, if wetlands are maintained or enhanced, and if the disturbance for stormwater management is the only feasible alternative, subject to all state and federal permits and wetlands mitigation requirements.

Review Criteria

- (1) Whether reasonable design alternatives exist to minimize the disturbance of wetlands on the site, including site design to incorporate wetlands within proposed public or private open space.
- (2) Whether wetlands disturbance depicted on the subdivision plan accurately reflects those activities necessary to develop the site as proposed.
- (3) The quality of the wetlands that may be impacted and the amount of wetlands to be disturbed.

- (4) Whether the subdivision plan complies with all other applicable floodplain, water resource protection area, wet areas, and related requirements of this Code.”

2. Delete Subdivision and Development Regulations Appendix III, Section VIII(d), which reads as follows:

“(d) *Design alternatives*. The Public Works director may approve modifications to the subdivision plan site design that serve to preserve wetland areas or minimize the disturbance of wetlands.”

and replace it with the following:

“(d) *Design alternatives*. The Public Works Director may approve modifications to the subdivision plan site design that serve to preserve wetland areas or minimize the disturbance of wetlands. As specified in the Delaware Sediment and Stormwater Regulations, wetland disturbance for stormwater management shall be limited to the construction of pond embankments, provided that the intended or functional aspects of the stormwater facility and wetlands are maintained or enhanced and the construction in the wetlands for this purpose is the only reasonable alternative. All necessary state and federal permits must be obtained and mitigation measures satisfied.”

3. Amend Subdivision and Development Regulations, Appendix III, Section VIII (a) by adding a new subsection “c.” to existing criteria for Public Works Department waivers for wetlands reports, to read as follows:

“c. New or additional construction is proposed in developed areas where in the determination of the Public Works Director, no wetlands impact will occur.”

Riparian Buffer Amendments

Subdivision and Development Regulations, Appendix III, Section II, provides detailed standards and regulations for watercourse maintenance in Newark, including designating areas of responsibility; delineating prohibitions regarding stream blockage, dumping of debris in streams, etc.; and specifying design requirements for watercourses through developments. To expand these riparian [that is, anything connected with or immediately adjacent to the banks of streams or other bodies of water] regulations and thereby help to protect our stream banks from erosion, to reduce “nonpoint source” pollution and to reduce the amount of sediment transferred to our stream channels, the Planning and Development Department suggests that the Planning Commission recommend to City Council the following:

1. Amend Subdivision and Development Regulations, Appendix III, Section II, by adding the following new subsection (d) as follows:

“(d) *Riparian Buffer Protection Requirements*. Because the preservation of Newark’s streams and stream banks in an undisturbed natural condition constitutes important physical, aesthetic, recreational, water quality, health, and economic assets for our community, new construction in subdivisions approved after the date of the adoption of this ordinance shall comply with the following:

- (1) In addition to conformance with the City Zoning Code Article XXVI, Special Provisions for Floodplains and Land Adjoining Floodplains, plans shall show all perennial watercourses identified through site inspection and labeled on United States Geological Survey (USGS) maps with a solid blue line [known as “blue line” streams – see attached].
- (2) Within a 50 foot buffer area, measured from the top of the banks of the blue line streams and from 50 feet from beyond the Open Floodway District, as designated in Zoning Code, Chapter 32, the land shall be managed to enhance and maximize the value of the stream channel and water resources by

prohibiting the following, except for uses permitted and regulated in City Zoning Code Article XXVI, Special Provisions for Floodplains and Land Adjoining Floodplains [the intent of this regulation is to establish requirements for lands within fifty foot buffer of each side of the Open Floodway District and within fifty feet of each side of blue line streams, measured from the top of the banks, except for uses within the Open Floodway District that are otherwise and specifically regulated]:

- (a) Clearing of existing trees and vegetation, except for selective pruning that does not compromise vegetation; removal of individual trees that are diseased or may cause disease; removal of trees and vegetation that are in danger of causing damage to existing structures or municipal facilities, or that otherwise may jeopardize public safety; and removal of poison ivy and similar vegetation.
 - (b) Soil disturbance by grading, stripping or similar practices, including alteration of the course of the stream.
 - (c) Filling or dumping.
- (3) These requirements do not apply to existing culverts unless the stream is removed from the culvert as part of the subdivision plan.
 - (4) Stream restoration and stabilization approved by the Public Works Director is permitted.
 - (5) The buffer area restrictions established herein shall not apply to area and related requirements, nor uses permitted in the underlying zoning district adjacent to the buffer area, as specified in the City Zoning Code.
 - (6) Subject to the approval of the City, the buffer area restrictions established herein shall not apply to the construction or maintenance of public utilities and facilities including, but not limited to, transmission lines, roads, drainage, water, wastewater, and similar facilities.
 - (7) The Public Works Director, in consultation with the Parks and Recreation Director, shall require a buffer area management plan through the construction improvement plan review process. This plan shall consist of descriptions of existing vegetation and a landscape plan for proposed new plantings. The requirement for new plantings may be waived only in instances where the existing stand of trees and is sufficiently wide and in such good condition to function as a riparian buffer as specified in this subsection.”

2. Amend Subdivision and Development Regulations, Section 27-20(a)(1)c., Minor Subdivisions, by adding the following new subsection:

“20. Show all United States Geological Survey (USGS) identified blue line streams.”

3. Amend Subdivision and Development Regulations, Section 27-21(b)(1), Major Subdivisions, by adding the following:

“5. Show all United States Geological Survey (USGS) identified blue line streams.”

Steep Slopes

Under the current Subdivision and Development Regulations, construction on slopes greater than 25% is not permitted, except with the approval of the Public Works Director, based on site conditions. To update and strengthen this requirement, the Planning and Development Department suggests the Planning Commission recommend to City Council the following:

1. Amend Subdivision and Development Regulations, Section 27-3(f)(2), by deleting the applicable language that reads as follows:

“Construction and building on properties with slopes exceeding 25% shall not be permitted, except with the approval of the Public Works Director, upon consideration of the geological, hydrological, and soil conditions of the site.”

and replace it with the following:

“Construction and building on properties with slopes exceeding 25% shall not be permitted. Construction and building on properties with slopes exceeding 15% to 25% shall be permitted only with the approval of Public Works Director, upon consideration of the geological, hydrological, and soil conditions of the site.”

2. Amend Subdivision and Development Regulations, Section 27-20(a)(1)c., by revising subsection 10 so that it reads as follows [new language in italics]:

“10. Contours at intervals of five feet; *areas with slopes between 15% and 25% and greater than 25% shall be identified.*”

3. Amend Subdivision and Development Regulations, Section 27-21, Major Subdivisions, (b)(1)a.3. by revising subsection (xi), so that it reads as follows [new language in italics]:

“(xi) Contours at intervals of two feet; *areas with slopes between 15% and 25% and greater than 25% shall be identified.*)”

Landscaping, Landscape Screening, Mature Tree Protection

Zoning Code Sections 32-87(a)(3) and (g)(5) provide specific language for mature tree preservation and protection measures for major subdivisions, including, in the case of residential subdivisions, shade tree planting requirements. Zoning Code Section 32-87(f)(4) delineates the City’s requirements for landscaping, landscape screening and tree plantings within parking facilities with twenty-five or more spaces. To significantly enhance and expand these regulations, especially for mid to large size parking areas, and to strengthen new and existing tree protection measures during construction for major subdivisions, the Planning and Development Department suggests that the Planning Commission recommend to City Council the following:

1. Amend Zoning Code Section 32-87(g)(5) by deleting the existing language which reads as follows:

“(5) All major subdivision plans shall for the portions of the site to be developed include mapping of all trees of 24” DBH (diameter at breast height, that is, measured at 4.5 feet above the ground) or greater and shall include the size of tree canopies, and plans for the saving or removal of these trees.”

and replace it with the following:

“(5) To meet the purposes of this Article, all major subdivisions, except as otherwise specified herein, shall include a landscape and tree preservation plan including the following:

- a. Accurate for location purposes mapping of all trees 18” DBH (diameter at breast height, measured at 4.5 feet above the ground) within the portions of the site to be developed. These trees shall be designated as valued trees.
- b. Size of existing tree canopies within the portions of the site to be developed.
- c. Landscaping and tree planting as specified in this Article.
- d. Tree preservation shall be required to limit removal of valued trees as defined herein, to a maximum of 25% of such healthy trees on the site. Additional valued

trees may be removed and replacement trees required to be planted prior to the issuance of certificates of occupancy, as directed by the Parks and Recreation Director. Such valued tree removal may be based on a Compartmentalization of Decay in Tree (CODIT) test that may be required by the Parks and Recreation Director. Trees replaced shall be at the following rate: Two, one and one half inch to two inch caliper trees for every six inches of caliper of the valued tree to be removed or five large shrubs or any combination of the two categories to be determined by the Parks and Recreation Director.

- e. Prior to demolition, clearing, grading or construction an area around the valued trees and any other trees designated for preservation shall be established to protect such trees and their critical root zone, defined by a circle on the ground beneath the tree(s) having a center point at the mid-point of the trunk, extending to the dripline of the tree or as far from the tree's root flare as possible. Fencing shall be erected to protect the critical root zone and tree using the following materials and methods:

1. 6' high chain link fence.
2. Mounted on two inch galvanized posts driven in the ground to a depth of two feet and at no more than ten foot centers or if hard surfaces (asphalt, concrete, etc.) are present, mounted on metal panel foot stands.
3. Provide a three foot wide opening for tree care and maintenance.
4. Fencing to remain in place until the final inspection of the project.
5. Two warning signs are to be prominently displayed on each protective fence. The signs shall be a minimum of ten by twelve inches and read as follows:

**TREE PROTECTION ZONE
THIS FENCE SHALL NOT BE REMOVED**

6. The signs are to be produced from a material that will not weather, fade or become dislodged.
 7. Any work within the Tree Protection Zone requires approval from the Parks and Recreation Director.
 8. No storage of materials, topsoil, vehicles, construction debris or other equipment shall be permitted within the Tree Protection Zone.
 9. Tree Protection Zones must be clearly and accurately displayed on all Landscape Plans.
- f. If during construction a valued tree which is identified to be preserved is removed without the Parks and Recreation Director's authorization, the developer shall make a contribution to the City's Beautification fund in the amount of \$1,500 and follow the replacement requirement as listed in (5)(d) above. In addition, if during construction a valued tree which is identified to be preserved is damaged the Parks and Recreation Director may require the developer to have an independent certified arborist evaluate the tree and provide a written report and recommendation on the tree's current condition and its future disposition. If the tree can be repaired, the developer will be responsible to do so adhering to the arborist's analysis and/or accepted International Society of Arboricultural Standards. If it is determined that the tree must be removed, the developer shall remove the tree, make the contribution to the City's Beautification fund and following the same replacement requirements.
 - g. Every effort shall be made to avoid placing underground utilities within the critical root zone of trees identified to be preserved. To preserve the natural environment and protect designated valued trees, tunnel borings shall be required when underground utilities must be placed within the critical root zone of said valued trees. The following tunnel boring depths are to be observed.
 1. Trunk DBH less than 12 inches – 24 inches.
 2. Trunk DBH 12 inches or more – 36 inches.

- h. Landscape and tree preservation plans shall be evaluated by the Parks and Recreation Department on a case by case basis that shall entail examining the existing tree resources on the site and take into account the dynamics of trees and construction impacts, in order to create a plan that results in a balanced mixture of tree species and tree age. The goal of each review is to insure that through a combination of preservation and landscaping, the final landscape and tree preservation plan produces a diversified and sustainable urban landscape.”

2. Amend Zoning Code Section 32-87(g) by adding a new subsection (6) to read as follows:

“6. If requested by the Parks and Recreation Director, minor subdivisions shall include an existing tree protection plan as described in subsection (5)e. above.”

3. Amend Subdivision and Development Regulations Section 27-21, Major Subdivisions, (b)(1) by deleting subsections (xii) and (xiii) which read as follows:

- “(xii) Location of proposed landscape screening.
- (xiii) The general location of mature tree stands, if any.”

And replacing this language with the following (and renumbering the following subsection as required):

“(xii) On a plan with contours at intervals of two feet show all landscaping and the tree plantings, mature trees and community assets as specified in Chapter 32, Zoning, Article XXV, Landscape Screening and Treatment, and Community Assets, Appendix IX, of this chapter.”

4. Amend Zoning Code Section 32-87(f)(4), by deleting subsection a. which reads as follows:

“a. Every 25 spaces shall include raised and curbed landscaped islands designed to ensure a smooth flow of traffic. Such landscaped islands shall total 330 square feet of areas per 25 parking spaces that may be divided into islands or into continuous strips within the total area set aside for parking and access to parking. Each island or strip shall contain turf and ground cover which shall form a continuous mat of vegetation within one year of installation; turf shall not exceed 50% of the total landscaped island or strip. Each 330 square feet of landscaped islands or strips shall have a minimum of two shade trees with a minimum one and one half caliper and 10 feet in height. Two ornamental trees with a minimum one and one-half inch caliper and eight feet in height may be substituted for each shade tree.”

and replacing this language with following:

“a. Every 25 spaces shall include raised and curbed landscaped islands designed to ensure a smooth flow of traffic. Such landscaped islands shall total a minimum of 250 square feet of area per 25 parking spaces that may be divided into islands or into continuous strips within the total area set aside for parking and access to parking. Each island or strip shall contain turf and ground cover which shall form a continuous mat of vegetation within one year of installation; turf shall not exceed 50% of the total landscaped island or strip. Each 250 square feet of landscaped islands or strips shall have a minimum of one shade tree with a minimum two and one half inch caliper and 12 feet in height at planting, and a minimum 12 inch Diameter at Breast Height (DBH) at maturity. Shade trees shall be installed so that no parking space shall be more than 75 feet from a tree trunk. Public Works Department approved under drains, to remove excess water, shall be installed at landscaped islands and strips. Areas used for landscaped islands or strips shall be provided in an amount

equivalent to a minimum of 15% of the total paved parking facility, not including buffer areas separating the parking facility from adjoining streets or properties.”

5. Amend Zoning Code Section 32-87(f)(4) by deleting subsection c., which reads as follows:

“c. Off-street parking areas containing 25 to 125 spaces shall be set back from each abutting street right-of-way by a landscaped strip at least 10 feet wide; with at least 50% of this required area comprised of plants a minimum of 36 inches in height within one year of installation; landscaped berms can be used to meet this height requirement; and with one 2.5 inch caliper street tree, a minimum of 12 feet in height, spaced a minimum of 30 feet and a maximum of 40 feet apart.”

and replacing this language with following:

“c. Off-street parking areas containing 25 to 125 spaces shall be set back from each abutting street right-of-way by a landscaped strip at least 10 feet wide; containing one 2.5 inch caliper street tree, a minimum of 12 feet in height, spaced a minimum of 30 feet and a maximum of 40 feet apart; and also containing evergreen shrubs with one 24 inch minimum in height shrub per three lineal feet expected to reach a minimum height of 36 inches and a minimum spread of 30 inches within three years of planting; landscaped berms can be used to meet this height requirement and such berms may consist of solid walls or earth berms incorporated into the landscaping, at a minimum of 36 inches in height, except where such installation conflicts with sight distance requirements for motor vehicles. If walls are used, compatibility in design with the facades of the proposed or existing buildings shall be required. Walls must have one-third of their surface area that face off-site covered by plant materials.”

6. Amend Zoning Code Section 32-87(f)(4) by deleting subsection d. which reads as follows:

“d. Off-street parking areas containing more than 125 spaces shall be set back from each abutting street right of way by a landscaped strip at least 20 feet wide and shall conform to all other design specifications in subsection c. above.

by replacing this language with the following:

“d. Off-street parking areas containing more than 125 spaces shall be set back from each abutting street right of way by a landscaped strip at least 20 feet wide and shall conform to all design specifications in subsection c. above. Such areas, in addition, shall include landscape screens not less than 120 feet apart parallel with parking area vehicle travel lanes; such screens shall be at least 6 feet wide, containing evergreen shrubs with one 24 inch minimum in height shrub per three lineal feet, expected to reach a minimum height of 36 inches and a minimum spread of 30 inches within three years of planting; these areas may be combined with other required parking area plantings. Landscaped berms can be used to meet this requirement and such berms may consist of walls, incorporated into the landscaping, at a minimum of 36 inches in height, except where such installation conflicts with sight distance requirements for motor vehicles. If walls are used, compatibility in design with the facades of the proposed or existing buildings shall be required. Walls must have one-third of their surface area that face parking areas covered by plant materials.”

Amend Zoning Code Section 32-87(f)(1) by adding to the existing language which reads:

“(1) All portions of improved properties, except as noted below, which are not used for buildings, structures, off-street parking and loading, sidewalks, malls, or similar purposes, shall be appropriately landscaped with turf, shrubs, trees, and other ground cover in such a manner as to minimize erosion and stormwater runoff and to improve the general appearance of the property. Such landscaping may extend into the building setback line, rear of side yard,”

by adding the following before the last sentence:

“Such areas shall, in addition, include one shade tree with a minimum 2.5 inch caliper and 12 feet in height for every 700 square feet.”

Downtown Above Ground Utility Impact Fee

As specified in Comprehensive Development Plan IV, in order to help pay for a new program for the relocation of the City’s downtown electric utility lines, either underground or to the rear of buildings fronting on the impacted streets, the Planning and Development Department, in conjunction with the Electric Department, has provided below a methodology for assessing and sharing such costs with downtown developers. Please note, in this regard, that the Electric Department estimates that the cost of underground Main Street installation of aerial utility lines at \$2,900 per front footage. The following amendment presumes a 75/25 cost sharing between the City and property owner/developer.

Please note regarding this proposal that the Planning and Development Department recognizes the magnitude of the cost involved; but if the City is to pursue this goal, we need to begin to raise funds to meet it – as stipulated in Comprehensive Plan IV. By way of example, concerning the fee’s cost impact, the small 129 E. Main Street project (47.84 feet of frontage), recently reviewed by the Commission, would have generated a fee of \$34,684 for underground utility line installation. This example, we believe, underscores the importance of the Commission’s need to carefully weigh this proposal to insure that it does not become a disincentive that might limit quality development downtown. The Commission, of course, may also revise the formula if it is concerned about the cost impact.

In any case, to establish the program, the Planning and Development Department suggests that the Planning Commission recommend the following to City Council:

Amend Subdivision and Development Regulations, Appendix VII, Electricity Service, 1(c) which reads as follows:

“(c) Extensions to industrial and commercial customers will be examined individually to determine the applicant’s participation in financing, if any.”

and replace it with the following subsections:

“(c) Extensions to industrial and commercial customers will be examined individually to determine the applicant’s participation in financing, if any. In addition, for subdivision plans of all types calling for construction on properties fronting on streets within the Downtown Newark Development District, as described in Comprehensive Development Plan IV, and as may be further modified from time to time by City Council, a downtown above ground utility impact fee shall be assessed, subject to the following:

- (1) An assessment of \$725 per foot based on the number of feet along the street line. In the case of subdivisions situated at the corner of two streets or otherwise so situated as to be assessed on one of such streets, only one “front” of the property and that portion of a designated side frontage in excess of 125 feet, shall be assessable for this fee.

- (2) These assessments, representing approximately one-quarter of the estimated cost to install aerial Main Street utility lines underground, shall be deposited in a fund established and distributed at the sole discretion of the City for utility line underground installation or relocation, with the intent of removing utility lines and poles from downtown street frontages.
- (3) The assessment established herein may be revised from time to time, based on the recommendation of the Electric Director, to reflect revised estimates of the cost to install aerial Main Street utility lines underground.
- (d) All new utility lines for new construction in undeveloped areas or parcels shall be installed underground, subject to the approval of the Electric Director.”

Recommendation

The Planning and Development Department suggests that the Planning Commission review this report in detail, receive public comment, and following your consideration, make recommendations to the City Council regarding each of the following categories of Zoning Code and Subdivision and Development Regulations amendments included in this report:

- Wetland Protection and Buffers
- Riparian (Water Course) Protection and Buffers
- Steep Slope Protection
- Landscaping, Landscape Screening and Mature Tree Protection
- Downtown “Above Ground” Utility Impact Fee.”
-

Mr. Lopata: I will be glad to answer any questions.

Ms. Brown: Regarding wetlands, how did you come up with 50 ft. wide buffer?

Mr. Lopata: We looked at a whole series of standards in different communities. I don’t remember whether that was specifically in John’s recommendation, but we used standards from different communities, and that was one we bounced back and forth on. Currently, there is no requirement. 50 feet is relatively stringent.

Ms. Brown: It doesn’t seem big enough to me.

Mr. Lopata: You have to remember we are going to zero essentially. We are a relatively developed city. If you look at Page 2 and 3, the set of ordinances, I have a fairly good memory but I cannot remember which communities I took that standard from.

Ms. Brown: 50 feet to me just seems too small because I am concerned about, for instance, if you have a development and people are treating their yards with any chemicals.

Mr. Lopata: You have to remember, this is for new development where what does a developer do in terms of disturbance. That is what this is about. This is not about the City trying to keep people from putting pesticides on their lawns.

Ms. Brown: I know, but what I am saying is, I’m wondering if 50 feet is big enough to keep pesticides away from a runoff into a wetland. We know historically now and scientifically that runoff is a real issue into our wetlands, rivers, streams, etc.

Mr. Lopata: That is what this is all about.

Mr. Bowman: How do you answer that question?

Ms. Brown: The scientific people should.

Mr. Bowman: Should it be 100 feet, 200 feet, 1,000 feet, what? What is enough?

Mr. Lopata: I think the key thing here is what we are going from. You can see the existing regulations because you have them in front of you. On page 4 are our wetlands regulations. It says, “minimal feasible alteration of the wetlands,” itself. Here we are talking about essentially leaving the wetlands alone except in very limited circumstances and adding a 50 ft. buffer. And, by-the-way, the little walkway business, I found that in one of the city ordinances from other communities, so that made sense because a wetlands sometimes can be attractive and people ought to be able to go look at it.

Mr. Bowman: Birdwatchers . . .

Ms. Brown: How far does stuff that is not good for a wetlands travel? What is the scientific data here?

Mr. Lopata: We have scientists in the room. I will let them speak about it when we get to that.

Mr. Bowman: The question becomes in many respects here, what kind of a level of risk are you looking for? If you are looking for zero risk, that is not feasible.

Ms. Brown: We have to minimize the risk and we haven’t in the past.

Mr. Bowman: But, there is a difference between zero risk and minimal risk and where is minimal risk and what price do you want to pay for zero risk?

Ms. Brown: Let’s try to minimize the risk as best we can.

Mr. Bowman: That is certainly something we should think about and do, but you have to be a little bit careful here before you wind up with a cost that is astronomical.

Ms. Brown: I agree with that but we have abuse in the past and that is why we need to do this.

Mr. Bowman: This is certainly a step in the right direction.

Ms. Brown: So, I want the scientific evidence.

Mr. Bowman: But, if there isn’t any scientific evidence to support 50, or 100, or 200, or 1,000, which do we pick?

Ms. Brown: Then we need to see what he says.

Mr. Osborne: Peggy, isn’t 50 feet better than zero.

Mr. Lopata: That is the point I made.

Ms. Brown: Yes.

Mr. Begleiter: Roy, is it accurate to say that in paragraph two on page 5 that, essentially, that says that properties that are already developed are frozen in place and that the 50 foot buffer would not apply to already developed properties?

Mr. Lopata: The last sentence is for developed properties.

Mr. Begleiter: So, my question is, do we have an inventory in the City of Newark of how many square inches of undeveloped wetland adjacencies there are?

Mr. Lopata: There are wetlands maps that we have.

Mr. Begleiter: Do we have any idea how much acreage or square inches there is?

Mr. Lopata: There is not a lot.

Mr. Begleiter: That is what I am getting at. Maybe it would be a good idea before we vote on this to have a sense of how much impact is this vote going to have anyway. It might not have very much impact.

Mr. Lopata: Let me give you an example of where we know it might have impact. – the Newark Country Club property. Currently, that has an approved subdivision on it but the clock is ticking. If they come back for redevelopment of that site with a different plan and void the present subdivision, we know there are wetlands there, which would result in significant impacts to development at that site.

Mr. Begleiter: Chrysler has some?

Mr. Lopata: Chrysler has very little. Out on Elkton Road, the properties that are owned by Stine Haskell; if they are to be annexed, there are some wetlands out there. North of the City there are very little that are annexable.

Mr. Begleiter: The only reason I raise the point is that it may be that the impact of whatever we do here is going to be fairly minimal anyway. Even if we made it 100 feet or 1,000 feet, it might turn out that there isn't that much wetland that is undeveloped.

Mr. Lopata: There are some wet areas that are east of the City. There is a little tributary near where that Army Reserve Center will be. That subdivision has not come in yet, and we talked about how that is going to come back. That might impact to a certain extent that property. I'm just trying to think of these things of the wetlands maps that I have seen. Ralph's point is well taken. We don't want to over sell this as though this is going to do something spectacular, but there are wet areas out there, some out on Elkton Road, as I have said. Of course, the one that comes to my mind immediately is the Country Club. I have hit golf balls into the wetlands, so I know there are wetlands.

Mr. Begleiter: Here is what I am getting at. I don't know if this is possible or not, but I remember in the Comprehensive Plan process when we talked about this, it came up. Is there a wetlands map of the City of Newark and its immediate adjacencies? I think the answer to that is yes. And, is it possible to overlay on that map the developed properties so that we could highlight in red, here are the four places in the City of Newark where such a regulation would actually have some affect?

Mr. Lopata: The easy thing to do at your next meeting would be, we could get you a wetlands map so you can see where these are.

Mr. Begleiter: I am thinking that maybe that evidence would help us decide the width of the buffer.

Mr. Lopata: Much like the blue line stream is. You have a map where you can see blue line streams.

Mr. Begleiter: It might be that when we look at the map we say 50 feet is plenty because of other things that we see on the map or we might say, are you kidding 50 feet is barely scratching the surface, but I think it might help us evaluate that.

Mr. Osborne: On the same paragraph there, you said the last sentence applies to the previously developed parcels. It says, "The buffer area shall consist of the area between the site's impervious surface. . ." Impervious is macadam or the actual structure.

Mr. Lopata: Yes.

Mr. Osborne: ". . . and the wetlands jurisdictional line." So, whatever distance there is hypothetically between my house and my adjacent wetland that's the buffer.

Mr. Begleiter: You are grandfathered.

Mr. Osborne: I'm good. There is no impact.

Mr. Begleiter: That is the point of what I was saying earlier, that when we look at the City there probably aren't that many places or that many acres.

Mr. Osborne: This only applies to undeveloped.

Mr. Lopata: When John Gaadt and Linda Stapleford and I first met, I think that the first sentence in our first conversation was regarding that Newark was by and large a development city and therefore we need to do these things for the vacant areas that still exist.

Mr. Osborne: That sounds reasonable to me.

Mr. Begleiter: I think Roy is right that it is going to be impossible or improbable for us to tackle this entire series of recommendations tonight, but there are people who showed up to talk about, perhaps, any one of them and we don't know which ones they came to talk about. So, I was going to suggest that we at least allow the people who came tonight to speak about whatever part of it they wanted to speak about before we reorganize however it is we are going to take this up in the future, not foreclosing future public comment. In other words, they may not be here to talk about something else.

Ms. Sheedy: After the public has a chance to speak if we continue to discuss this evening, I was wondering, Mr. Chairman, if we could be a little more informal than with a normal meeting since we do have Joe and John here, and having more of a dialogue with technical personnel I think might be helpful.

Mr. Bowman: We can do that within limits. The Chair will still retain the ability to cut things off if it gets out of control.

Mr. Joe Charma: 711 Harvard Lane. Good evening Chairman Bowman and Commissioners. Thank you for giving me the opportunity to speak.

I did bring some visual aids, and I think I can help you with a lot of your questions. So, I am prepared to talk briefly about the entire package. I have concerns about each section and maybe a couple of recommendations and concerns.

Mr. Begleiter: Mr. Chairman, can we secure a promise from Mr. Charma that if he goes quickly tonight but we have further questions on a future occasion that he would be willing to come back on another day to discuss this in more detail?

Mr. Bowman: I'm sure he will.

Mr. Charma: What this first exhibit is, it is the major blue line streams in the City, and they are namely the White Clay Creek, the Christina Creek, the West Branch of the Christina, and Cool Run. There are a few that are sub-branches to those major branches. Page 5 of the proposed amendments, paragraph 2C, I would recommend that that buffer for the wetlands be 25 feet rather than 50 feet as an adequate protection for a wetland area because the wetland area itself is a natural water quality function. That is its function to remove pollutants, to mitigate flood waters and things of that nature. In addition, as was mentioned earlier – you guys were kind of hitting on it – most of the wetland areas within the City are located within the 100 year floodplain, so they are already protected. The floodplain is protected.

With respect to the section on Riparian Buffer Amendments – research around the country has shown that riparian buffer widths of 50 feet will adequately remove nitrogen, phosphorous and sediments associated with urban runoff. The important factors are that the buffer width be forested with native tree and shrub vegetation. Forested buffers, also slow run-off and cool run-off protecting from erosion and thermal pollution. What you can see on the first handout is forested areas that surround the major water courses. If you look at the first image, Christina Creek, I have a notation on there that the floodplain is about 300 feet wide that surrounds the Christina Creek. It is heavily vegetated and that

goes down through Christianstead. Similarly, that falls for each of those so that gives you kind of a snapshot of what is going on. These images were taken from New Castle County website that they use to indicate the protected lands in the County because forested areas are protected, critical natural areas are protected, streams are protected and so forth. I tried to give you a view of what is going on there.

There is no doubt that establishing riparian buffer for the City's major water course is the environmentally sound thing to do. With respect to this exhibit, obviously the wider the buffer the more effective, but there needs to be some criteria. Observing the characteristics of the major water courses in Newark namely Christina Creek, White Clay Creek, West Branch and Persimmon Run, you will note that while different riparian conditions may exist the majority of the adjacent lands discharging through riparian areas are urbanized. So, it is important to preserve the quality of the stormwater runoff into those water courses. Again, because the land in the City is gently sloping lands adjacent to these water courses (slopes are generally less than 15%), most of the adjacent lands are enforced at floodplains already protected by City ordinances.

Buffering the 100 year flood plain is of little value for floodplains greater than 50 feet wide. As I mentioned before, 50 feet is already the magic number that is nationally recognized. However, for floodplains confined within or just over the top of bank water forces a 50 foot riparian buffer should be established beyond the 100 year floodplain. So, I contend that establishing the 50 foot riparian buffer zone measured from the top of bank of the water course combined with the already protected 100 year floodplain will create a level of protection necessary to ensure adequate buffers. There are several floodplain and riparian buffer conditions which can be generalized as fairly representative of what we have here in the City.

I would like to call your attention to the second exhibit. It has figures 1 – 3 on it. The top is where we have a wide floodplain that far exceeds the top of the banks of the channel. The floodway is confined to the channel, top of bank is where it is and it is located within the forested area. What I am saying is I agree with establishing a 50 foot buffer along that measured from the top of bank in conjunction with the already protected 100 year floodplain.

Mr. Lopata: Make sure it is clear, this is opposed to what I am proposing.

Mr. Charma: 50 feet outside of the 100 year floodplain. The next figure down is where we have a channel that is a very steep bank channel. The longitudinal slope of the channel could be steep where the flood waters are confined to the channel and the floodway is confined to the channel. That is a condition where you would want the 50 foot buffer measured from the top of bank or the edge of the 100 year floodplain. In that case you would measure it from the edge of the 100 year floodplain, whichever is going to give you the greater distance. But, you need to recognize that the channel morphology is little bit different.

The third figure is a condition where we, again, have a minor channel and we have one side of the riparian buffer vegetated and the other side is not vegetated. Again, the same protection level should apply. A 50 foot buffer should be established. We should be reforesting in the zone that does not have vegetation. One of the areas that will match that, if you look at Curtis Mill Park, the middle panel, you can see the reservoir at the top and then below you can see Old Paper Mill Road and then you can see this part of Curtis Mill Park. That is pretty much meadow and on the other side of the White Clay, of course, there is the old MVF site. So, you have a situation there where you do have some forest, you have mostly meadow and you have developed sites. The park side of the stream should be reforested. You should establish a 50 foot buffer.

Mr. Lopata: Joe, again, item 7 on page 8, the Area Management Plan, doesn't that take care of figure 3's problem other than your measurement issue? We are calling for a buffer area management plan. "This plan shall consist of existing vegetation and a landscape plan for proposed new plantings." So, that covers that area other than the issue of where you measure from, which is really what you are getting at.

Mr. Charma: Yes, I am getting at that and elaborating a little more. I will give you a copy at the end of the meeting to look at.

I recommend that the City Parks Department evaluate the condition of the existing forested areas within the 50 foot riparian buffer areas and create a reforestation plan if necessary to enhance RBA's where inadequate vegetation exists. If the land consists of undeveloped parcels, future developers could share in the cost of the reforestation effort with the City. On parcels where development already exists, the Parks Department should create an annual budget item for enhancement. I know this is not a great time to talk about that one.

With respect to the steep slopes ordinance, on page 8 of the amendment I have a few questions about it. How much of the land in the City will be impacted by this amendment and have affected property owners been notified? I also have an issue with stating steep slopes. There is nowhere in the ordinance where it tells you how to measure those slopes. How do you define them? What I would recommend is that for slopes greater than 25%, those are slopes based on the site survey where a slope exists in a continuous horizontal increment of 50 feet or more not including manmade slopes. For slopes that are 15 to 25% I would recommend – again, this would be based on a sight survey -- where a slope exists in any continuous horizontal increment of 50 feet or more.

Mr. Lopata: This would only apply to new subdivision. This section, you are talking about where does it impact, again, we don't have a lot of vacant land.

Mr. Charma: I think those property owners who own property that has potential to be developed . . .

Mr. Lopata: Joe, every time we change the Code we affect people. We can't very well do that.

Mr. Charma: I am just throwing that out there.

Mr. Begleiter: Before you leave that, Joe, let me make sure I understand you. What you are saying is that to find the steep slope, you have to set a horizontal space within which you calculate the slope.

Mr. Charma: Yes.

Mr. Begleiter: So, in your view if the slope is very steep but only 10 feet wide, it wouldn't qualify as a steep slope because it doesn't extend for 50 feet.

Mr. Charma: You could have one contour interval.

Mr. Lopata: I have to have Public Works look at that.

Mr. Begleiter: That's a place you would want to have some protection against erosion and other things.

Mr. Charma: Again, you have to think about 4:1 slope. That is not very steep. The maximum slope that we work with when we grade is 3:1. That's 33%.

Mr. Lopata: Joe, but on the other hand, ordinance after ordinance I saw had this criteria nationally. I am not just talking about coastal communities.

Mr. Charma: All I am saying is you don't have a method of measuring yet.

Mr. Lopata: We don't now with the current ordinance.

Mr. Charma: It can't be arbitrary. It has to be something I can take and sit down with a plan.

Mr. Lopata: Anyway, I think that is a good suggestion and I will review it with Public Works.

Mr. Charma: With respect to the landscape screen on page 11, paragraph 5C and 6, the last line refers to walls having 1/3 of their surface area base covered with plant material. I don't really know what that means.

Mr. Lopata: The idea here is two different sets of rules for buffers between a roadway and buffers within very large parking lots like we had this evening. An applicant would be required to put a strip of landscaping, in either one of those cases, and could have a landscape buffer, could have trees, could have shrubs, but they also could put in a wall because the intent of the buffer is really to break up the view of the cars, but the wall has to be landscaped to a certain extent with either ivy, evergreens or some kind of plantings so it is not just a wall. That particular clause comes from the town of Southern Pines which is the home town of our City Manager.

Mr. Charma: We have that very case here in Newark. 209 E. Main Street has a little wall that hides a parking lot. The plant materials are on the other side. The Main Street side has some flowers.

Mr. Lopata: It's a BB district. It would have been waived.

Mr. Charma: University of Delaware, S. College Avenue, the new building there, there is a new building with a wall with a fence on it. It looks very nice.

Mr. Lopata: Wouldn't it look nice with some landscaping. Your point is well taken, but these are for larger parking lots. This wouldn't apply to your little building on Main Street.

Mr. Charma: All I am saying is that 1/3 of the wall surface, does it mean that it has to have ivy or can it be shrubs.

Mr. Begleiter: It does say plant materials.

Mr. Charma: Jumping to Ralph's favorite. I do agree that the 75/25 % cost sharing is more appropriate. All residents in the City will benefit from burying the power lines which will make the downtown development area more attractive to new businesses desiring to locate in Newark. Those businesses will generate more revenue for the City. All in the City should share in the burying of those lines. I do not agree with the cost calculation based on street frontage of the property. Perhaps rather than frontage electric consumption for individual businesses should be the basis of the calculation. In other words, a large commercial building with many tenants will consume more power than a smaller building. For example, a restaurant may consume more power than a barbershop.

Mr. Lopata: This is a visual impact rather than an energy impact.

Mr. Begleiter: You don't know who the tenants are going to be, as you yourself have told us many times in your proposals.

Mr. Charma: What I am getting at, in short, the City should investigate other ways to cover the cost of burying lines that will not economic growth or redevelopment within the downtown area or in any part of the City, for that matter. I suggest that the City pursue a possible FEMA grant to bury the power lines, as Delaware is a coastal state and may be eligible for disaster management or other federal funds.

Mr. Begleiter: I agree, we have to come back to that issue, but I would like to know what else you spent on other City imposed regulations in connection with that piece of property. If you are going to raise that as an issue, then we have to look at those other things. How much did you have to spend on the landscaping for the islands in the parking lot, and how much did you have to spend to setback the building the appropriate distance? All these other regulations had costs. They weren't all assessed the way this

one is in a very explicit way tied to a specific thing. In that context I suspect \$35,000 would not look quite as outlandish.

Mr. Charma: Take a site like the Millyard. That is not a very large building but it has a big long frontage on a narrow property, probably several hundred feet. They would never do anything with the property.

Mr. Begleiter: There are a ton of issues like this that we have to discuss in this connection and we have to look at that issue absolutely the way you have suggested, but the problem with looking at it that way is that if you look at it from the Electric Department's point of view for a second. If you have a property that is a single family home with a single spinster living in it way up on the top of where the reservoir is, for example, the Electric Department still has to put in telephone poles with the developer, has to put in all the same infrastructure to carry a small amount of electricity that is going to be used by that spinster's refrigerator.

Mr. Charma: They should pay more.

Mr. Begleiter: Who should pay more?

Mr. Charma: With a real economic model the users that are further out may cost more to get service.

Mr. Begleiter: That is my point, that it is not all dependent on how much power they use and that is also true on Main Street.

Mr. Charma: I am just saying, there are a lot of different ways. If you looked at it from a purely economic model, the guy that lives further away from the plant should pay more.

Mr. Begleiter: Exactly, and that is my concern about going with a how much power do they use model because today it is a barbershop, tomorrow it's an air conditioning salesman who has 15 air conditioners running in the small residence.

Mr. Charma: I appreciate your indulgence at this late hour, I just wanted to get this on the record.

Mr. John Gaadt: I am an environmental planning consultant here on behalf of the White Clay Creek Management Committee. We have been working with Roy for over a year now on a negotiative process to get to what you are looking at tonight. We didn't get everything we wanted, but I think we came up with a very good compromise. If we want to talk about the science of protecting wetlands or riparian buffers, there is a lot out there; and the buffers can range anywhere from 25 feet up to 300 feet depending on what you are trying to protect. I think what we tried to do was look at the watershed management plan for the White Clay Creek taking into consideration where Newark is on the White Clay Creek, what is going on in Pennsylvania with the municipalities there, and what New Castle County is doing. What we recommended in both some meetings with Roy and in several memorandums that were prepared by myself and by Linda Stapleford on the Management Committee, was to try to find some common ground that we could all agree on. I think the science in terms of the White Clay Creek is best explained in the Watershed Management Plan that was performed for the White Clay Creek. What we are suggesting here is, let's try to look at that science and look at where Newark is and let's be consistent with what is going on both in upstream Pennsylvania and what is going on in New Castle County. So, the numbers here, I think, are relatively consistent. When we look at 50 foot buffer on a wetlands, that is the standard that New Castle County uses, and that is the standard that most of the communities upstream from Newark are using in Pennsylvania. So, the idea that we have some consistency makes a lot of sense, and it really follows in terms what the Watershed Management Plan is saying.

I wanted to say that in terms of both the riparian buffer recommendations in here and the wetlands recommendations. You are more than welcome to look at the memos that Linda and I prepared for Roy. The Watershed Management Plan, I am sure, is available here at City Hall, and I would be happy to answer any questions you might

have. I can also come back if you have questions on other sections as you are reviewing those. But, I would say that I think it was a very fruitful negotiative process working with Roy and the City, and I think we have both compromised. I think Roy understands that. We certainly understand that. We may be back to you in the future depending on how this goes to push for more. That is part of the process. We are comfortable with what you have before you now.

Mr. Lopata: Of course, I am going to keep you posted as we go forward because this may not happen every first Tuesday, as you heard me mention. I am not going to ask you to analyze this tonight but it would be helpful if you might give some thought and comment about Joe's boundaries because that is something, obviously, he is going to pursue. I would like to get your sense of whether that makes sense.

Dorothy Miller: 430 Orchard Road. One thing about the 50 vs. the 25 feet, and it is known as creeping encroachment. You've got to have 50 to get the 25 most of the time. I have been sort of studying the document that you gave me, Roy, the 14 pages or so, and there is one word that has popped up there. It is "minimal" feasible alteration.

Mr. Lopata: That is a term of art that used in ordinance after ordinance.

Ms. Miller: Yes, and minimal, I'm not sure that shouldn't be minimum, but anyway, minimal is a weasel word that was used by the Corps of Engineers for many years and that is probably how it got in. It is a weasel word, so I think you have to have some sort of definition or something. Think about it anyway.

Jean White: 103 Radcliffe Drive. I will start with the environmental regulations. I would like someplace in the report or Municipal Code to say that the Wetlands Report must be done before the Planning Commission meetings. Awhile back I had pointed out to the Public Works about the appendix and there had been a number of times when it hasn't been ready. And, generally speaking, the Commission does not get the wetlands report, which I can understand because often times it is a very thick document with many maps and much analysis, but it would be nice if the Planning Commission got a one or two page summary of this very thick thing. I do think there should be a 50 foot buffer from the edge of wetlands. I think that is very important not to say the wetlands itself is enough.

Mr. Lopata: I don't think we are proposing that, Jean.

Ms. White: When it was mentioned the four major waterways, White Clay Creek, Christina and it was said the East Branch. Well, really, I want to say that West Branch and Christianstead really have the East Branch of the Christina running through them. The developer did not seem to know east from west. The West Branch is coming down near Leon's Garden World and coming in at that point. So, there are two branches but it is the East Branch that is running by Christianstead.

I think it is wonderful to strengthen the riparian buffer, and I think it should be 50 feet whether it is a wide flat floodplain or whether the OFD is basically very narrow. It still should be 50 feet beyond the edges on either side.

Steep slopes -- I think that is great. Some of us tried to get that in about nothing beyond 25% awhile back when there was a 40 page document coming from Public Works. But, at that time it failed. I do see the point of Mr. Charma's comment that there has to be standards to define that.

The landscaping, I am interested in this because awhile back, for example, the shade trees that are required along street frontages, there was a landscape committee which I was fortunate to be allowed to be a part of. At that set of meetings discussing shade trees along frontages, I had asked that there would be root guards at the shade trees between the curb and the sidewalk. Montgomery County in Pennsylvania requires them and a lot of people that have sidewalks coming up, a root guard would minimize that sort of thing. I think the protection around what is called valued trees by a chain link fence, not just a ribbon type thing, I think, is a great idea. When we are talking about

protection, we can think of downtown, our Sycamore tree that had to be taken down next to the Capano building because the workers cut the roots and, therefore, damaged the tree in such a way that the root structure for keeping the tree up was damaged too much. Another thing that could go under this Protection of Valued Trees is, there is a very interesting master's thesis that exists in the library of the University of Delaware which was a study looking at trees and how much survived the construction process as developments are being built. It is very interesting because there are a lot of old developments now that everybody here would recognize, but one thing that they found is that where there are clusters of trees, you have to protect all of those. You can't pick and choose a tree here or there because the roots are entangled or interconnected in some way.

On page 11 and 12 of the landscape information, "every 25 spaces of raised and curbed landscape island which will have 330 sq. ft. of areas per 25 parking spaces," and then it is being replaced with something that is the exact same thing that is going down to 250 sq. ft. So, I didn't know if that was a purposeful thing or a mistake.

Mr. Lopata: No that is purposeful because the 15% at the bottom of that section is much larger than what we currently require.

Mrs. White: I didn't have time to study it.

Mr. Lopata: The idea was to require more landscaping in smaller sections.

Mrs. White: One final thing is, one final outcome of the committee and I and others were on a number of years ago was to put out a bond for landscaping. That bond that the developer had to do was 2 years and if the trees survived at the end of two years, they got their bond back. What has bothered me and some other people is since that time there are a number of places where trees have subsequently died, cut down or knocked down. The owner of the property is not expected to do anything now. A prime example would be College Square where you have the berm opposite the Newark Free Library, and for many reasons some of those trees have not survived, but there has been nothing put in their place. There are other places that one could cite around the town. Yes, they got their bond back but it seems that they have no responsibility for maintaining any trees whatsoever.

I have things to say about the electric. You can ask me or if you really don't want to hear me, I can bring it to a subsequent meeting.

Mr. Lopata: This is going to come up again, Jean.

Mrs. White: I know it is. Do you want hear my comments or not? I can make them as quick as I can.

Mr. Bowman: Two minutes . . .

Mr. Begleiter: We will probably hear them again won't we?

Mrs. White: It is up to you.

Mr. Begleiter: If you promise not to repeat them the next time this comes up, I would vote for letting you do it now, but if you want to say them again just do it once.

Mrs. White: I would have more time to say then some other time.

Mr. James Brown: 1226 Old Cooches Bridge Road. Our property backs up to the creek. The river was moved over for the highway development. The creek was somewhere around 8 to 10 ft. deep. Right now it is about maybe 2 ft. deep at the most. It has filled in. A lot of trees have fallen in. I have lost anywhere from four to five feet of ground where it has underroded the back of my property. I have a couple of trees that are just about ready to drop into the creek. I think when the damn was broken, we had a terrible time. The water level got really high. I think you should dig deep in that creek again and

try to do something along the banks without damaging the property that we have worked on. I think if you went in there and dug that channel out, beefed up the sides better so that we won't lose any more property, you would have more water in there during the dry season.

Mr. Bowman: We will bring it back to the table for further discussion or a motion to table it.

Mr. Begleiter: Mr. Chairman, I would like to make two comments one of which will deal with how we should handle this. The first thing I really want to say is, certainly on behalf of myself and I think on behalf of the Commission, I want to thank Roy and all those that he credits in his report, including Joe and Mr. Gaadt and others, for this masterful compilation of environmental impact issues and research. I think this is a really important updating of standards that have been unchanged for a long time in the City of Newark, and while circumstances have been changing significantly, of course, as we have know from our past dealings with some of these issues and as we already recognize tonight from just skimming the surface of these, this is not going to be easy work. It is not going to be without its political challenges but it is vitally important for the City of Newark. As all of you know, I have been especially interested in the electrical issue and I am really delighted to see it come up in a way that we can tackle it, finally, and deal with it.

Mr. Charma, I am going to suggest that we have to figure out a method for managing these issues. I know I have a lot of questions on each one of these issues in this packet and I am sure other Commissioners do as well, and I know members of the public and the community will as well. So, I was going to suggest that we think about a schedule of dealing with these things. We don't have to decide on that schedule tonight but rather than dealing with it tonight I suggest we table it and then come up with a schedule that we can know about in advance and advertise in advance. I think you could package this for issues 1-4 in one bunch that involves public comment on these landscaping, water and related issues, and then a second batch that deals exclusively with the electric issue which I think is big enough in and of itself to command public comment and discussion among constituents that have an interest in it; then maybe a third meeting to vote on what to do about it after there is an opportunity to craft the final language.

Then I would also like to raise the idea of, certainly on the issue of the electric thing, I would love to have the opportunity to hear from and have a discussion with the Electric Department because there are issues and technicalities here. If we don't think we know about 50 ft. vs. 100 ft. and how many trees it takes to filter out pollutants, at least I for one don't know enough about how the electric system operates to know whether some of the things we are suggesting are feasible. What about the Commission meeting with or including in some fashion the Design Committee on these issues? I could see a session in which the Design Committee, developers, the Electric Department and perhaps others of special interest like that could have some discussion.

Mr. Lopata: The Design Committee has actually has already weighed in on the idea of underground lines. They are very much in favor of it.

Mr. Begleiter: What about the other issues?

Mr. Lopata: They are not really design issues. I agree with everything you've said except that Ralph. We will never get done. We have a Planning Commission. We have City Council. We have already gone through the Comprehensive Plan process which took in input from everyone who was interested and provided guidance and a framework for these changes. Now we are more at the nuts and bolt stage. I like the idea of breaking them up. The first four fit together.

Mr. Begleiter: I think the first four fit together and number one is going to be the easiest of them in the end.

Mr. Lopata: I think we can go forward. The reports would even be separated, you would have different sets of rules and we will start with the next meeting if I can get some of it

on the agenda. We would invite the Electric Director to be at the meeting when we discuss the utility impact fee.

Mr. Begleiter: The other advantage of breaking them up would be for the public and the constituents. They wouldn't be sitting around for hours to talk about a 50 ft. riparian buffer if we spend the whole evening talking about electricity.

Mr. Lopata: I just wanted to get it all before you to get the process started. That is really why this was done.

Mr. Begleiter: Since you keep referring to this fee, I have come up with some other ideas for what to name the electric impact fee that Roy has used. I am not suggesting we deal with that tonight.

Mr. Bowman: Can you pass them along outside this meeting?

Mr. Begleiter: I will pass them along outside this meeting but I just want to say that the reason that I did that was that I really think it is going to be important for us to consider this in a bigger way. It has got to be considered as something as good for the City not as something that is a fee on this developer.

MOTION BY BEGLEITER, SECONDED BY BROWN, TO TABLE REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AND THE SUBDIVISION AND DEVELOPMENT REGULATIONS UPDATING NEWARK'S ENVIRONMENTAL AND AESTHETIC STANDARDS, INCLUDING WETLANDS AND RIPARIAN PROTECTIONS AND BUFFERS; STEEP SLOPE PROTECTIONS; LANDSCAPING AND MATURE TREE PROTECTION; AND ESTABLISHING A DOWNTOWN ABOVE GROUND UTILITY IMPACT FEE.

Mr. Begleiter: I want to be clear for the record that my motion is not to table this because it is bad to proceed with them or delay them; it is to organize how to deal with it.

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, McDOWELL, OSBORNE
SHEEDY

NAY: NONE

ABSENT: DRESSEL

MOTION PASSED UNANIMOUSLY

Meeting adjourned at 10:26.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission